

NUCLEAR REGULATORY COMMISSION**10 CFR Parts 170 and 171**

RIN 3150-AF07

Revision of Fee Schedules; 100% Fee Recovery, FY 1995**AGENCY:** Nuclear Regulatory Commission.**ACTION:** Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 1995 less amounts appropriated from the Nuclear Waste Fund (NWF). The amount to be recovered for FY 1995 is approximately \$503.6 million.

EFFECTIVE DATE: July 20, 1995.

ADDRESSES: Copies of comments received and the agency workpapers that support these final changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: C. James Holloway, Jr., Office of the Controller, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-415-6213.

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I. Background

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), enacted November 5, 1990, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered NWF, for FYs 1991 through 1995 by assessing fees. OBRA-90 was amended in 1993 to extend the NRC's 100 percent fee recovery requirement through FY 1998.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established in 10 CFR part 170 under the authority

of the Independent Offices Appropriation Act (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing individually identifiable services to specific applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses or approvals, and amendments to or renewal of licenses or approvals. Second, annual fees, established in 10 CFR part 171 under the authority of OBRA-90, recover generic and other regulatory costs not recovered through 10 CFR part 170 fees.

On March 20, 1995 (60 FR 14670), the NRC published its proposed rule establishing the licensing, inspection, and annual fees necessary for the NRC to recover approximately 100 percent of its budget authority for FY 1995, less the appropriation received from the Nuclear Waste Fund.

Several changes were proposed by the NRC to the fees to be assessed for FY 1995. These changes were summarized in the proposed rule (60 FR 14671; March 20, 1995) and are as follows:

1. Change the method for allocating the budgeted costs that cause fairness and equity concerns. Approximately \$56 million would be allocated to all NRC licensees based on the budgeted dollars for each class of licensees.
2. Eliminate the materials "flat" inspection fees in 10 CFR 170.31 and include the inspection costs with the annual materials fees in 10 CFR 171.16(d). These actions would streamline the license fee process and result in more predictable fees.
3. Change the methodology for calculating the professional hourly rate to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates were proposed instead of a single rate.
4. Change the methodology for calculating annual fees for power reactors, fuel facilities, and uranium recovery licensees to improve the relationship between annual fees and the cost of providing regulatory services to the classes and subclasses of licensees, and to improve NRC efficiency.
5. Implement the newly promulgated NRC small entity size standards and establish a new lower-tier size standard for annual fee purposes.

The Commission held a public meeting on March 15, 1995, at which the NRC staff briefed the Commission on the proposed changes for FY 1995. A transcript of the Commission meeting is available and has been placed in the Public Document Room.

The American Mining Congress¹ filed a Petition for Rulemaking which requested among other things that (1) annual fees not be assessed for mills in a standby status; and (2) a licensee review board to oversee NRC fees be established. The Commission denied the request on April 28, 1995 (60 FR 20918) noting that (1) the NRC will continue its current practice of providing available backup data to support 10 CFR Part 170 licensing and inspection billings upon request by the applicant or licensee and (2) petitioner's request that the Department of Energy be assessed fees for Uranium Mill Tailings Radiation Control Act (UMTRCA) actions was implemented in the final fee rule for FY 1994.

II. Responses to Comments

The NRC received twenty-two comments on the proposed rule. Although the comment period ended on April 19, 1995, the NRC has reviewed and evaluated all comments received, including those that were late.

Many of the comments were similar in nature. For evaluation purposes, these comments have been grouped, as appropriate, and addressed as single issues in this final rule. The comments are as follows:

A. Comments regarding the major changes proposed in the FY 1995 fee rule.**1. Change the Method for Allocating Those Budgeted Costs (About \$56 Million) That Cause Fairness and Equity Concerns**

Comment. The commenters agreed that the proposed method for allocating approximately \$56 million in budgeted costs for NRC activities which are not directly related to the cost of regulating licensees represented a more equitable method for distributing the costs. Many commenters indicated that, pending legislative relief by Congress to remedy this inequitable situation, they supported the proposal to treat these costs similar to overhead and distribute these costs based on the percentage of the budget directly attributable to a class of licensees. However, the commenters also believed that these costs should not be paid by any licensee and recommended that the NRC should continue to urge Congress to modify OBRA-90 to remove these costs from the fee base. For example, one commenter stated that the proposed 89% allocation of these costs to power reactors results in a charge of \$511,000

¹ The American Mining Congress merged with the National Coal Association on February 13, 1995, and is now the National Mining Association.

per operating power reactor. The commenter argued that "power reactor licensees should not have to bear this ever increasing additional fee charge for NRC agency costs that are not related to the regulatory costs of these licensees. Accordingly, these costs should not be included in the user fee base to be recovered from power reactor licensees."

Response. The NRC is adopting in this final rule the allocation method in the proposed rule because it represents an equitable way to allocate the costs and most of the comments supported use of the revised methodology. As noted in the comments, on February 23, 1994, the NRC submitted its report to Congress on fees in compliance with the Energy Policy Act of 1992. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent, and eliminate the requirement that NRC assess 10 CFR Part 170 fees. Because the requested legislation has not been enacted, the NRC in this final rule will allocate the costs (approximately \$56 million) that have raised fairness and equity concerns among the broadest base of NRC licensees. The Commission will continue to discuss and work with the Congress to make fees more fair and equitable.

2. Streamline and Stabilize Fees

Comment. Commenters, for the most part, supported the proposal to stabilize fees by adjusting the annual fees starting in FY 1996 by the percentage change (decrease or increase) in the NRC's total budget. Commenters also supported the NRC's plan to reexamine this approach should there be a substantial change in the total NRC budget or in the magnitude of a specific budget allocation to a specific class of licensees. Commenters also were in agreement that the "flat" materials inspection fees of 10 CFR part 170 should be eliminated and the costs included in the 10 CFR Part 171 annual fees. Most commenters agreed that the proposed changes represent a simplification and streamlining of the fee-setting procedures and are necessary in order to eliminate the large swings in annual fees that have occurred in past years and to allow for greater predictability of fees. Other commenters indicated, however, that they are

concerned about the simple annual percentage change adjustment to future annual fees because there has been no resolution of certain long-standing concerns associated with the fairness and equity of NRC fees.

Response. The NRC is adopting in this final rule the proposed methodology to streamline and stabilize fees based on the comments received supporting the methodology. Although not a specific change in this rule, the NRC plans to adjust the annual fees only by the percentage change in NRC's total budget beginning in FY 1996. The NRC believes that this action will help stabilize and improve the predictability of fees. The fees established in this final rule will be used as the base annual fee in subsequent years and the percentage change (plus or minus) in the NRC total budget, adjusted to reflect changes in the total number of licensees paying fees and estimated collections from 10 CFR part 170 licensing and inspection fees, will be used to establish annual fees. However, the NRC will make modifications should there be a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees. To streamline fees, the NRC is eliminating the materials "flat" inspection fees in 10 CFR part 170 by including the cost of inspections in certain materials licensees' 10 CFR part 171 annual fees.

3. Change the Methodology for Calculating the Professional Hourly Rate to Better Align the Budgeted Costs With the Major Classes of Licensees

Comment. All commenters responding to this proposed change supported the revised method of calculating hourly rates to separately, and more equitably, allocate the costs associated with the reactor and materials programs. Commenters believe that the new dual rate structure, which establishes different rates for reactor and materials reviews, is inherently fairer and more equitable to licensees. Most commenters were pleased that the rates for both the reactor and materials classes of applicants have been reduced as compared to FY 1994 and indicated that changing the method of calculating hourly rates is a step in the right direction towards providing a more reasonable relationship to the cost of providing regulatory services. Commenters supported the use of the "cost center" concept to identify and allocate the NRC budgeted resources to different types of major programs, namely reactor and material licensees, and indicated that this methodology is more consistent with Congressional intent that the NRC identify and

properly assess fees to the entities that utilize NRC resources and regulatory services.

Other commenters, however, indicated that while they appreciate the 13 percent reduction in the professional hourly rate for the materials program (from \$133 per hour to \$116 per hour), applying such a uniformly high rate for NRC staff cannot be justified. These commenters point out that the \$116 hourly rate equals or exceeds the hourly charges of senior consultants, principals, or project managers at major consulting firms and substantially exceeds the generally accepted rate for technical staff performing similar work in private industry. Commenters encouraged the NRC to continue examining its budget structure and cost allocation methods so that the hourly rate can be made consistent with and representative of comparable services performed by private industry. One commenter stated that the NRC has still not adequately explained the derivation of the hourly rate, aside from basing it on a presumed number of chargeable hours per full-time equivalent, or how it relates to the services provided. Another commenter stated that the hourly rates are arbitrary and do not reflect the costs of providing regulatory services to licensees.

Response. In this final rule, the NRC has established two professional hourly rates for FY 1995 which will be used to determine the 10 CFR Part 170 fees. A rate of \$123 per hour is established in § 170.20 for the reactor program and a second rate of \$116 per hour is established in § 170.20 for the nuclear materials and nuclear waste programs. The two rates are based on the "cost center" concept that is now being used for budgeting purposes.

The NRC professional hourly rates are established to recover approximately 100 percent of the agency's Congressionally-approved budget, less the appropriation from the Nuclear Waste Fund (NWF), as required by OBRA-90. The rates reflect the NRC cost per direct professional hour. This cost includes the salary and benefits for the direct hours, and a prorata share of the salary and benefits for the program and agency overhead and agency general and administrative expenses (e.g., rent, supplies, and information technology). Both the method and budgeted costs used by the NRC in the development of the hourly rates of \$123 and \$116 are discussed in detail in Part III, Section-by-Section Analysis, relating to § 170.20 of the proposed rule (60 FR 14676; March 20, 1995) and the same section of this final rule. For example, Table III shows the budgeted costs and

the direct FTEs that must be recovered through fees assessed for the hours expended by the direct FTEs. Additional details on the hourly rate are provided in the NRC workpapers located in the Public Document Room.

4. Modify NRC Small Entity and Lower-Tier Size Standards for Annual Fee Purposes

Comment. Two commenters addressed the changes proposed by the NRC for small entity fees. While generally supporting the changes, they believed additional changes should be made. One commenter stated that while he was relieved to see the dramatic reduction in materials annual fees, the company's well logging department of only six employees is still unable to qualify as a small entity even under the new standard because the overall gross annual receipts of the consulting company exceed \$7 million. The second commenter stated that the proposed rule that would raise the dollar threshold for a medical program from \$1 million to \$5 million will afford him great relief and ensures that service will continue to be provided to patients. The commenter, however, believes that a more equitable approach would be to base fees on the nuclear medicine activity levels or nuclear medicine billing-receipts levels rather than the total dollar volume of the entire company.

Response. The NRC uses the receipts-based size standards established by the Small Business Administration (SBA) to establish its own small entity size standards. The SBA recently adjusted its receipts-based size standard levels to account for the effects of inflation. The NRC adjusted its receipts-based size standards in turn from \$3.5 million to \$5 million, to conform to the SBA rule (60 FR 18344; April 11, 1995). The NRC has also eliminated the separate \$1 million size standard for private practice physicians and will apply the receipts-based standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC believes that these actions will reduce the impact of annual fees on small businesses.

With respect to basing fees on the gross receipts for a department within a company, or on activity levels or nuclear medicine billing-receipts levels rather than the total dollar volume of the entire entity, the NRC's size standards are based on the SBA guidance which defines annual receipts as those which include "revenues from sales of products or services, interest, rent, fees, commissions and/or whatever sources derived." Moreover, as NRC has stated previously, it is impractical to

base fees on the criteria suggested by the commenter. See Regulatory Flexibility Analysis in Appendix A to the final rule published July 10, 1991 (56 FR 31511-31513).

5. Change the Methodology for Calculating Annual Fees for Power Reactors, Fuel Facilities, and Uranium Recovery Licensees

Comment. All the commenters representing the power reactor, fuel facility, and uranium recovery industries supported the simplification of annual fees and are encouraged that the annual fees have been reduced compared to FY 1994 levels. Commenters from the reactor industry favored a uniform fee for each operating power reactor. Commenters from the uranium recovery industry supported attempts to make the annual fees more accurately reflect the cost of providing regulatory services and agreed that the proposed fees are far more reasonable than in past years. However, these commenters believe that NRC needs to address a fundamental industry concern that, as the industry continues to shrink in size thereby decreasing the number of licensees being charged annual fees, the costs associated with regulatory services will continue to increase significantly for each remaining licensee. This trend will force more hardships on an industry that is already severely depressed. Other uranium recovery licensees commented that they are concerned with the NRC's proposed fee calculation matrix, which uses a qualitative estimation ranking of "significant", "some", "minor", or "none" to determine a factor used for establishing the annual fee amount for each license. Commenters suggest a more quantitative approach should be applied, using actual costs and resource time allocations, to determine a more accurate fee assessment schedule.

Response. In this final rule, the NRC has established a single uniform annual fee for each operating power reactor and has refined its method of calculating annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in the final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this

reexamination. These revised methodologies have been used to determine the final FY 1995 annual fees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to the subclasses of fuel facility and uranium recovery licensees. The revised methodologies are explained in more detail in Section IV—Section-by-Section Analysis of this final rule.

With respect to the suggestion that a more quantitative approach be used to develop the annual fees, the NRC has corroborated the qualitative estimates with resource and time allocation data where such data exist. However, such data in some cases are not available at the level necessary to corroborate the qualitative determinations. The NRC believes that in such cases the approach to be used still results in a more fair and accurate annual fee being charged to fuel facility and uranium recovery licensees.

In response to the comment relative to annual fee increases as a result of the decrease in the number of licenses, the changes in this final rule to stabilize fees should minimize large fee changes as a result of decreases in licenses. See response to Comment A.1.

B. Other Comments

1. Amendments to § 170.11

Comment. One commenter supported the proposal to amend § 170.11 to conform to section 161w. of the Atomic Energy Act which would permit charging 10 CFR Part 170 fees to not only power reactors operated by the Tennessee Valley Authority and other Federal government entities, but also to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC).

Response. The NRC has been assessing the USEC 10 CFR Part 170 fees under the authority provided in 161w. of the Atomic Energy Act of 1954, as amended (AEA). The NRC is amending § 170.11 to conform its regulations to this statutory provision.

2. Low-Level Waste Costs

Comment. One commenter was concerned that the proposed fee schedule does not adequately reflect the long-term regulatory costs which are associated with power reactors. The commenter believed that the NRC's \$7 million in annual costs for generic low-level waste work is low in comparison to long-term costs associated with these activities. The commenter indicated that it might be prudent to assume that the long-term costs associated with low-

level waste sites will eventually exceed the revenues immediately collected upon disposal.

Response. The amount of \$7 million for NRC's low-level waste activities is the amount identified in the FY 1995 budget to be recovered through fees for these activities. If the NRC costs of these activities increase over the long term and are included in the NRC budget, the NRC is required by OBRA-90 to identify and to recover the increased costs from its licensees in the year in which the costs are budgeted. OBRA-90 does not permit the NRC to recover potential future costs that are not included in the current FY 1995 budget.

3. Spent Fuel Storage

Comment. One commenter encouraged the NRC to ensure that any costs associated with spent fuel storage and transportation, particularly the costs associated with the review of the Department of Energy's (DOE) multi-purpose canister program, are kept properly separated from the costs for specific utility licensing actions. Because these activities are funded from different sources, the commenter stated that NRC must ensure that the cost burden for the DOE reviews is not reflected in utility licensing fees. The commenter noted that in the FY 1995 proposed rule there is no explanation for maintaining the fees for general licenses for storage of spent fuel at substantially higher levels than the fee in 1992 (\$43,000) or 1993 (\$136,000). The commenter questioned whether the fee charged to spent fuel storage licensees includes amounts allocated for other activities.

Response. The costs associated with the review of the DOE's multi-purpose canister program are costs related to the High-Level Waste program which are appropriated from the High Level Waste Fund and separated from specific utility licensing actions. Therefore, in accordance with OBRA-90, the DOE review costs are not included in utility licensing fees, but rather are recovered from the Nuclear Waste Fund. Although the FY 1995 annual fee for spent storage licenses (\$279,000) is higher than in FY 1992 (\$43,000) or 1993 (\$136,000), it is lower than the fee assessed in FY 1994 (\$365,170). The reasons for the increases over FY 1992 and FY 1993 were explained in detail in the final FY 1994 rule (59 FR 36902; July 20, 1994). To recap, first, the budgeted amount necessary to regulate spent fuel facilities increased to provide regulatory oversight for the increased number of facilities. Additionally, as the licensing of these facilities was completed, the amount of fees from 10 CFR part 170

necessarily decreased. This resulted in an increased amount that must be recovered from annual fees in 10 CFR part 171.

4. Annual Fees Should Be Prorated When a License is Downgraded

Comment. One commenter proposed that § 171.17(b) be amended to allow proration of annual fees for licenses that are downgraded during the year.

Response. The NRC agrees with the commenter that some provision should be made in the annual fee regulations for those instances where a license is downgraded to a license category with a lower annual fee during the fiscal year. Although the NRC currently has in place a system to track applications for new licenses and terminations which can be readily used for fee purposes, no similar system exists that could easily track upgrades or downgrades of licenses. As a result, § 171.17 is amended to allow for proration of the annual fee for a downgraded license upon request of the licensee. Such a request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

If a timely proration request is filed, annual fees for licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated activities during the specified period. Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Licenses for which applications for downgrade are filed on or after April 1 of the fiscal year are assessed the full fee for that fiscal year.

5. Avoid Billing for Services Rendered One Year Prior to Billing Date

Comment. One commenter proposed that the NRC void any bill for costs of regulatory services that were performed more than one year prior to the invoice date. The commenter stated that this would result in the NRC striving to issue invoices in a timely manner to assure recovery of its budget authority and would not place the licensee in a position of having to pay an unexpected and potentially large invoice.

Response. The NRC has not included this proposal in the final rule. The NRC is required by the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 to pursue debts and claims owed to the U.S. government. However, the NRC has made efforts to issue bills in a more timely manner. During the past year, the NRC has implemented procedures to bill for licensing reviews and inspections within 30 days of the close of the billing quarter during which the review or inspection occurred or was completed. Although there have been rare cases where bills were not issued in a timely manner for licensing and inspection activities, the NRC believes that the 30-day billing procedures will help to minimize the number of such occurrences in the future.

6. Reinstate Fee Ceiling for Topical Report Reviews

Comment. One commenter requested that the NRC reinstate a fee ceiling in 10 CFR part 170 for topical report reviews because a fee ceiling would encourage the submittal of topical reports, thus contributing to the advance of the state-of-the-art in the nuclear industry and the resultant improvement in nuclear plant safety. The commenter stated that the current uncapped fee structure encourages prolonged and unreasonably detailed technical reviews by NRC contractors.

Response. The NRC indicated in the FY 1991 final fee rule that it had decided to eliminate the ceiling for topical report reviews based on the 100 percent recovery requirement and Congressional guidance that each licensee or applicant pay the full costs of all identifiable regulatory services received from the NRC. Further, the NRC's costs for topical report reviews vary significantly depending on the particular topical report reviewed. This makes it impractical to establish an equitable fee ceiling or flat fee (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA-92. The policy of assessing 10 CFR

part 170 fees, without a ceiling, for the review and approval of topical reports was reconfirmed. For these reasons, the NRC is not establishing a fee ceiling for topical reports in this final rule.

7. Comment

Several comments were received from uranium recovery licensees.

Commenters suggested (1) a tiered fee system that would result in full fees for operating facilities and reduced fees for facilities in shutdown or standby status; (2) a licensee review board be established to review NRC fees annually; (3) the NRC establish standards for its activities, such as a schedule for response intervals for processing licensing actions; and (4) 10 CFR part 170 bills be itemized to show hours spent, a description of the work performed, the names of individuals who completed the work and the dates the work was performed.

Response. In response to a petition for rulemaking from the American Mining Congress (60 FR 20918), the NRC addressed each of these comments in the **Federal Register** on April 28, 1995. While denying the petition, the NRC noted that it would continue its current practice of providing available backup data to support Part 170 licensing and inspection billings upon request by the licensee or applicant.

8. Establish Reimbursable Agreements With Agreement States and Other Government Agencies

Comment. Several commenters chose to comment on this change, even though the NRC indicated in the proposed rule that the issue of reimbursable agreements falls outside the scope of the proposed rulemaking. The commenters indicated that such action by NRC will affect the levels of fees to be paid by licensees. Those commenting on this change were encouraged by the NRC's initiative in seeking a better way to charge these expenses and supported the NRC's decision to increase the use of reimbursable agreements to eliminate certain costs that do not benefit NRC licensees. Most of the commenters on this issue, however, encouraged the NRC to proceed immediately to negotiate these reimbursable agreements and not wait until FY 1997 because NRC licensees are currently paying for these costs. One commenter suggested that, in the interest of properly and fairly allocating costs, this program be expanded to cover more, if not all, of the costs of the regulatory support to and oversight of Agreement States (about \$20 million) rather than limit recovery under reimbursable agreement to costs associated with training, travel and

technical support provided to Agreement States.

In addition, several commenters believe that the NRC should assess the Environmental Protection Agency (EPA) for NRC work such as review of regulations promulgated by EPA relating to radionuclide emission standards. One commenter stated that costs to support certain activities related to international treaties may best be covered by the Department of State, the Department of Energy or the Agency for International Development.

On April 5 and 6, 1995, the NRC hosted an Agreement State Managers Workshop in Rockville, Maryland. At that meeting, the Agreement States expressed strong opposition to the reimbursable agreement concept, arguing that such agreements would have a negative impact on their programs. The NRC has also received letters from Agreement States expressing strong disagreement with the reimbursable program.

Response. The NRC indicated in the proposed rule (60 FR 14672; March 20, 1995) that it planned to increase the use of reimbursable agreements with Agreement States and Federal agencies and because this change affected the budget and does not alter fee policies or methods, it falls outside the scope of this rulemaking for FY 1995. It is, however, a subject that has generated strong responses, both positive and negative, on the part of licensees and Agreement States. As indicated previously, this policy does not affect the issuance of this FY 1995 rule and the NRC is proceeding to issue the FY 1995 final rule. The reimbursable agreement issue will be addressed as a separate policy issue in the future.

With respect to the interaction between the NRC and EPA on the promulgation of regulations, the Independent Offices Appropriation Act of 1952, as amended, precludes the NRC from charging fees to Federal agencies for specific services rendered. While the NRC can assess annual fees to Federal agencies holding NRC licenses, the EPA is not considered a licensee of the NRC with respect to regulations promulgated by EPA relating to radionuclide emission standards. Further, NRC interactions with EPA are an integral part of NRC's responsibilities under the Atomic Energy Act. Therefore, NRC must include the costs of this work in its budget and cannot perform such work under reimbursable agreements.

With respect to the NRC's international activities, the NRC budget includes certain international activities that are not directly related to NRC applicants or licensees. These activities

are performed because of their benefit to U.S. national interests. The NRC is required to perform some of these activities by the Atomic Energy Act (AEA) and, therefore, must budget for them. Over the past several years, the NRC has considered various means to recover the costs for international activities involving broad U.S. national interests, but has found no viable, fair way to do so. Further, it would not be practical to assess fees to foreign organizations, foreign governments, or to the State Department to whom some of the support is provided. For example, assessment of such fees might create foreign policy tensions that could complicate U.S. goals such as foreign reactor safety and nuclear non-proliferation. Until such time as legislation is enacted allowing the NRC to exclude the cost of international activities from the fee base, the cost of these activities must continue to be recovered from NRC licensees. These costs will be recovered from the broadest base of NRC licensees as described in the response to Comment A.1.

9. Fee Deferral Policy for Standard Plant and Early Site Reviews

Comment. One commenter urged the NRC to reestablish the NRC's previous fee deferral policy for standard plant and early site reviews in order to encourage the development of standardized designs and in light of the NRC decision to issue designs to be certified through rulemaking rather than by granting a license for the certified design.

Response. The Commission decided in its FY 1991 final fee rule that the costs for standardized reactor design reviews, whether for domestic or foreign applicants, should be assessed under 10 CFR part 170 to those filing an application with the NRC for approval or certification of a standardized design (56 FR 31478; July 10, 1991). Recently, the Commission revisited this issue as part of its review of fee policy required by EPA-92 and reconfirmed its FY 1991 decision. The NRC continues to believe that the costs of these reviews should be assessed to advanced reactor applicants. The NRC finds no compelling justification for singling out these types of applications for special treatment and shifting additional costs to operating power reactors or other NRC licensees, and does not believe the points made by the commenter are sufficient to change current policy.

10. Assessing Fees to Design Certification Applicants for Costs Following the Final Design Approval

Comment. Two commenters stated that the Commission should revisit its policy decision to charge fees to design certification applicants following the issuance by the NRC staff of a Final Design Approval (FDA).

Response. The statement of considerations accompanying the proposed rule said that the NRC would charge a vendor 10 CFR Part 170 fees for a design certification to recover all the costs of certification except the costs of any hearing that might be held under 10 CFR 52.51(b) before an Atomic Safety and Licensing Board (60 FR 14673; March 20, 1995). These charges are required by existing rules. The only reason the NRC mentioned these fees in the statement of considerations was to reflect in a widely-read document a policy that NRC had articulated fully only in letters to the vendor applicants in December 1994. The letters were in response to inquiries from three vendors last summer. The vendors, particularly ABB-Combustion Engineering Nuclear Systems (ABB-CE), had argued that all the costs of certification should be recovered through annual fees charged to the NRC's current power reactor licensees. ABB-CE, which received an FDA last year for the System 80+ and has applied for certification of the same design, wrote extensive comments on what NRC said about certification fees in the statement of considerations.²

Having considered ABB-CE's arguments, which were largely those ABB-CE had made last summer, the NRC has decided not to change the existing rules and policy on this issue. Although this whole topic is, strictly speaking, not part of this rulemaking, the NRC considers this rulemaking notice to be a useful vehicle for informing a larger public in some detail of ABB-CE's arguments and our responses. NRC's statements here are largely a repetition of arguments NRC made in the letters to the vendors and in a February 24, 1995, letter to the Senate Committee on Appropriations.

Comment. ABB-CE charges that "NRC is proposing to change its fee rules in the middle of the process to the detriment of certification applicants. * * * " (Comments at 10)

Response. Section 170.21 of the Commission's regulations has long explicitly listed standard design "certifications" among the regulatory actions for which "full cost" will be

recovered through fees charged to applicants. See 10 CFR 170.21 (1994), Schedule of Facility Fees, heading B, "Standard Reference Design Review". This policy has been the law since Part 52 was first promulgated. (See 54 FR 15372, 15399; April 18, 1989.) Even when, in the past, 10 CFR part 170 called for deferring payment of fees until a utility referenced the certified design, 10 CFR part 170 clearly said that the vendor would have to pay the "full cost of review for a standardized design approval or certification." 10 CFR 170.12(e)(2)(1) (emphasis added).

Comment. ABB-CE's most important argument for changing long-standing policy is that, according to ABB-CE, there is no benefit to ABB-CE in certification, except perhaps an "indirect" benefit of making the certified design attractive to U.S. utilities. (Comments at 4) ABB-CE says, "With the issuance of NRC's FDA in July 1994, * * * System 80+ constitutes a complete and approved standardized design which, without design certification rulemaking, has been accepted for bidding in the global marketplace." (Comments at 2) ABB-CE also argues that the nuclear utilities and their ratepayers and stockholders are the "direct" beneficiaries of certification, because it provides them with greatly reduced licensing risk, and because it contributes to the "continued viability * * * of an important energy option" and to the maintenance of the nuclear servicing-supply sector infrastructure. (Comments at 4)

Response. While the utilities may benefit from certifications, the vendor is more likely to benefit than is any given utility. The NRC knows neither whether, nor how many, applicants for combined construction permits and operating licenses (COLs) will benefit from a given certification. Certainly, not all current power reactor licensees will reference every certified design, and so current licensees will not benefit from every certification. If the design is referenced, the vendor will benefit directly, but most utilities will not. The NRC believes that had ABB-CE not had a reasonable expectation of deriving benefits from the certification, ABB-CE would not have applied for it.

Comment. ABB-CE points out that the vendor applicant does not become a "holder" of the design certification. In fact, a vendor other than the one that applied for certification can, as a matter of law, supply the certified design to a COL applicant. ABB-CE believes that this situation is incompatible with the notion that the original vendor is the primary beneficiary of the certification.

Response. The NRC agrees that the design certification applicant does not become a "holder" of the design certification. However, several things will make it difficult for a vendor other than the certification applicant to supply the design to a utility. First, proprietary information is protected during the certification proceeding (see 10 CFR 52.51(c)). Second, any vendor that supplies a design to an applicant for a COL must be prepared to provide the NRC with a large amount of design information not contained in the rule certifying the design. This information includes the detailed design of site-specific portions of the plant, and "information normally contained in certain procurement specifications and construction and installation specifications" (see 10 CFR 52.63(c)). Third, any vendor supplying a COL applicant a certified design which another vendor brought to certification must pay part of any deferred fees the original vendor owes (see 10 CFR 170.12(e)(2)(i)). Fourth and last, the original vendor's superior knowledge of the design will give that vendor a great advantage over competitors.

Comment. ABB-CE also argues that 10 CFR Part 170 fees should not be charged for a certification rulemaking because such a rulemaking is "generic." ABB-CE points out that the Commission has said that it will not charge 10 CFR part 170 fees for "generic rulemaking and guidance (e.g., 10 CFR part 52 and Regulatory Guides) for standard plants. * * * " (56 FR 31478; July 10, 1991.)

"* * * NRC has used the certification," ABB-CE says, "* * * to resolve broadbased policy issues that otherwise would have required independent public rulemaking proceedings." (Comments at 7) ABB-CE goes so far as to say that "nearly all of the procedural and substantive provisions in the proposed rule for System 80+ are similar or identical to those for the ABWR." (Comments at 6)

Response. The proposed rules which would certify the System 80+ and the ABWR are no more generic than licenses certifying the same designs would have been.³ The resolutions of policy issues in the proposed rules are resolutions specific to those two designs. Moreover, the two proposed rules are quite different. It is important to understand that the few pages of the

³It might have been difficult, if not impossible, for the System 80+ to be certified by license. Section 103d of the Atomic Energy Act says in part, "No license may be issued to an alien or any corporation or other entity if the Commission knows or has reason to believe it is owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government."

²Stone & Webster Engineering Corporation submitted brief comments on this issue. Those comments match some of ABB-CE's.

proposed rules which appeared in the **Federal Register** are only small parts of the rules. Both will incorporate by reference "Tiers" 1 and 2 of the complete designs. Thus the proposed rules are substantively as different as the designs themselves. Even the portions published in the **Federal Register** have no legal force with respect to other designs.

The NRC did state that 10 CFR part 170 fees would not be charged for "generic rulemakings (e.g., 10 CFR part 52) on standard plants." However, as the parenthetical reference to 10 CFR part 52 shows, the NRC was using the phrase "generic rulemaking" to refer to rulemaking which, like 10 CFR part 52 itself, applies to all, or at least many, designs.

Comment. ABB-CE asserts that the whole of a design certification rulemaking should be regarded as a "contested hearing" and thus have no 10 CFR part 170 fees charged in connection with it. ABB-CE's argument is, first, that under the Administrative Procedure Act (APA), notice and comment rulemaking constitutes a "hearing", and second, that the rulemaking surely will be "contested", because there will, in all likelihood, be filed "material comments reasonably opposing aspects of the proposed rule." (Comments at 9)

Response. It has long been the policy of the NRC not to charge 10 CFR part 170 fees for "contested" hearings, namely those adjudicatory hearings which are not mandated by law. The costs of such hearings are recovered through annual fees imposed under 10 CFR part 171. The NRC agrees that applicants for design certification should not be charged 10 CFR part 170 fees for any hearings held before an Atomic Safety and Licensing Board under 10 CFR 52.51(b), which offers an opportunity for a hearing on a proposed certification.

However, ABB-CE's position that the whole rulemaking is a "contested hearing" is neither required by law nor consistent with the meaning usually attributed to the phrase "contested hearing" in discussions of NRC matters. The phrase refers to those hearings, or parts of hearings, which are held under subpart G or subpart L of 10 CFR part 2, but which would not take place unless some party outside the agency asked for them. The Supreme Court case cited by ABB-CE for the proposition that every rulemaking is a "contested hearing", *US v. Florida East Coast Railway*, 410 US 224 (1973), says only that notice and comment rulemaking will, in certain circumstances, satisfy a statute's requirement for a rulemaking

hearing. The Court's decision does not say that every rulemaking is a hearing.

Comment. ABB-CE argues that charging vendors for the costs of certification is inconsistent with the NRC's recent decision to recover the costs of confirmatory research "related to the design" from the utilities, under 10 CFR part 171. If NRC recovers those costs from the utilities, then, argues ABB-CE, NRC should recover all the costs of certification from the utilities, because those costs too are "related to the design."

Response. ABB-CE misconstrues the policy. Its aim is to charge vendors applying for FDAs and certifications of standard designs for only the research which is necessary to support the issuance of the FDA or certification. Research initiated to address generic issues, such as human factors or code development, would be charged to the utilities under 10 CFR part 171, even if it had a bearing on the review of a standard design. (See 60 FR 14673; March 20, 1995.) There is in this nothing inconsistent with the existing regulations on certification fees. In both cases, the NRC is charging the vendors for what must be done before issuance of the FDA or certification.

III. Final Action

The NRC is amending its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 1995 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF. For FY 1995, the NRC's budget authority is \$525.6 million of which approximately \$22.0 million has been appropriated from the NWF. Therefore, OBRA-90 requires that the NRC collect approximately \$503.6 million in FY 1995 through 10 CFR part 170 licensing and inspection fees and 10 CFR part 171 annual fees. This amount to be recovered for FY 1995 is about \$9.4 million less than the total amount to be recovered for FY 1994 and \$15.3 million less when compared to the amount to be recovered for FY 1993. The NRC estimates that approximately \$141.1 million will be recovered in FY 1995 from the fees assessed under 10 CFR part 170. The remaining \$362.5 million will be recovered through the 10 CFR part 171 annual fees established for FY 1995.

Recognizing that OBRA-90 may have resulted in certain fees that were unfair or inequitable, Congress in Section 2903(c), of the Energy Policy Act of 1992 (EPA-92), directed the NRC to review its annual fee policy, solicit public comment on the need for changes

to this policy, and recommend to the Congress any changes to existing law needed to prevent placing unfair burdens on NRC licensees. The NRC reviewed more than 500 public comments submitted in response to the request for comment published in the **Federal Register** on April 19, 1993 (58 FR 21116), and sent its report to Congress on February 23, 1994. A copy of this report has been placed in the Public Document Room. This report concluded that modifications to existing statutes governing NRC fees are necessary to alleviate licensees' major concerns about fairness and equity and to reduce the NRC administrative burden resulting from assessing fees. The report recommended enactment of legislation that would reduce the amount to be recovered from fees from 100 percent of the NRC budget to approximately 90 percent of the budget and eliminate the requirement that NRC assess 10 CFR part 170 fees.

In view of the fact that legislation has not been enacted to address licensees' fairness and equity concerns and the concern about the additional workload generated by 100 percent fee recovery, the Commission has reexamined its existing fee policies to determine whether they can be made more equitable. This reexamination was undertaken with the goal of addressing, within the limitations of the existing laws governing NRC fees, the concerns identified in the report to Congress and improving other features of the NRC fee program. Based on this reexamination, the NRC is amending 10 CFR parts 170 and 171 to partially alleviate the identified concerns and improve the process of collecting NRC fees.

These final changes are summarized as follows and detailed in the following sections.

1. The method for allocating the budgeted costs that cause fairness and equity concerns is changed. Approximately \$56 million of NRC costs either do not directly benefit NRC licensees or provide benefits to non-NRC licensees. These costs will be treated similar to overhead and distributed to the broadest base of NRC licensees based on the percent of the budget for each class. As a result, power reactors will pay a greater percentage of these costs.

2. The selected materials inspection fees (i.e., flat fees and others with reasonable averages), hereinafter referred to as "flat" inspection fees in 10 CFR 170.31, are eliminated and the inspection costs are included with the annual materials fees in 10 CFR 171.16(d). These actions will streamline

the license fee process and provide more predictable fees.

3. The methodology for calculating the professional hourly rate is changed to better align the budgeted costs with the major classes of licensees. Two professional staff-hour rates are established instead of a single rate.

4. The methodology for calculating annual fees for power reactors, fuel facilities and uranium recovery licensees is changed to make annual fees more closely reflect the cost of providing regulatory services to the classes and subclasses of licensees and to improve efficiency.

5. NRC small entity and lower-tier size standards are modified for annual fee purposes.

6. The proration provision in 10 CFR 171 has been amended to allow proration of annual fees when materials licenses are downgraded during the year.

As a result of the reduced budget amount to be recovered for FY 1995, increased 10 CFR part 170 fee collections from power reactors, and these final changes, the annual fees for a large majority of the licensees have been reduced. The following provides illustrative examples of the changes in the annual fees.

Class of licensees	Annual fee	
	FY 1994	FY 1995
Power Reactors	\$3,078,000	\$2,936,000
Nonpower Reactors	62,200	56,500
High Enriched Fuel Facility ...	3,231,770	2,569,000
Low Enriched Fuel Facility ...	1,484,770	1,261,000
UF ₆ Conversion	1,179,770	639,200
Uranium Mills	74,670	60,900
Typical materials licenses		
Radiographers ..	19,170	13,900
Well Loggers	12,870	8,100
Gauge Users	2,470	1,700
Broad Scope Medical	32,570	23,200

To help stabilize fees, beginning in FY 1996, the NRC will adjust the annual fees only by the percent change in NRC's total budget. The annual fees in this final FY 1995 rule will be used as a base, and the percentage change (plus or minus) in the NRC total FY 1995 budget will be applied to all annual fees for the next four years (FY 1996–FY 1998 and FY 1999 if OBRA–90 is extended) unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case

the annual fee base would be reestablished. The decision on whether to establish a new baseline will be made each year during budget formulation. For example, if the total NRC budget is reduced by 3 percent and the number of licenses and the amount estimated to be recovered under 10 CFR part 170 remains constant in a given fiscal year, then all annual fees would be reduced by approximately 3 percent.

The NRC contemplates that any fees to be collected as a result of this final rule will be assessed on an expedited basis to ensure collection of the required fees by September 30, 1995, as stipulated in OBRA–90. Therefore, as in FYs 1991–1994 the fees will become effective 30 days after publication of the final rule in the **Federal Register**. The NRC will send a bill for the amount of the annual fee to the licensee or certificate, registration, or approval holder upon publication of the final rule. Payment will be due on the effective date of the FY 1995 rule.

The NRC will continue the proration of annual fees, established in FY 1994, in accordance with the provisions of § 171.17 for new licensees and requests for termination. The annual fees for both reactor and material licensees are prorated based on (1) The date applications are filed during the FY to terminate a license or obtain a possession-only license (POL) and (2) the date new licenses are issued during the FY.

A. Amendments to 10 CFR part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services

Four amendments have been made to part 170. These amendments do not change the underlying basis for the regulation—that fees be assessed to applicants, persons, and licensees for specific identifiable services rendered. The amendments also comply with the guidance in the Conference Committee Report on OBRA–90 that fees assessed under the Independent Offices Appropriation Act (IOAA) recover the full cost to the NRC of identifiable regulatory services each applicant or licensee receives.

First, § 170.11 is amended to conform it to section 161w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation, as these reactors and facilities are licensed or certified by the

NRC. In all other cases, the NRC is prevented from charging part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Second, the current method of calculating the 10 CFR part 170 professional hourly rate is revised. Currently, there is one professional hourly rate established in § 170.20, which is used to determine the fees assessed by the NRC. This professional hourly rate was \$133 per hour for FY 1994. The NRC has established two professional hourly rates for FY 1995, which will be used to determine the part 170 fees. The NRC has established a rate of \$123 per hour (\$214,765 per direct FTE) for the reactor program. This rate is applicable to those activities covered by 10 CFR 170.21 of the fee regulations. A second rate of \$116 per hour (\$203,096 per direct FTE) is established for the nuclear materials and nuclear waste program. This rate is applicable to those activities covered by 10 CFR 170.31 of the fee regulations. These rates are based on the FY 1995 direct FTEs and that portion of the FY 1995 budget that does not constitute direct program support (contractual services costs) and is not recovered through the appropriation from the NWF.

The two rates are based on cost center concepts that are now being used for NRC budgeting purposes. In implementing cost center concepts, all budgeted resources for each cost center are assigned to that center for analysis and license fee purposes to the extent they can be separately distinguished. These costs include all salaries and benefits, contract support, and travel that are required for each cost center activity. Additionally, all resources for the Advisory Committee on Reactor Safeguards (ACRS), the Advisory Committee on Nuclear Waste (ACNW), the Office of Investigation (OI), the Office of Enforcement (OE), and all program direct resources for the Office of the General Counsel (OGC) are assigned to cost centers. The NRC took a first step in this direction in FY 1994 when it directly assigned additional effort to the reactor and materials programs for OI, OE, ACRS and ACNW. Commenters supported this change in FY 1994 indicating that such assignment better defines the beneficiaries of certain regulatory activities and more equitably allocates the fees for services provided (59 FR 36897; July 20, 1994). The cost center concept is discussed more fully in

Section IV—Section-by-Section Analysis.

Third, the current part 170 licensing and inspection fees in §§ 170.21 and 170.31 for applicants and licensees are revised to reflect both the revised hourly rates and the results of the review required by the Chief Financial Officers (CFO) Act. To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a licensing action (new license, renewal, and amendment) for those materials licensees whose fees are based on the average cost method (flat fees).

Based on evaluation of the historical data related to the average number of professional staff hours needed to complete materials licensing actions, the NRC has increased the fees in some categories and decreased the fees in others to reflect the costs incurred in completing the licensing actions. Thus, the revised average professional staff hours reflect the changes in the NRC licensing review program that have occurred since FY 1993. The revised licensing fees are based on the new average professional staff hours needed to process the licensing actions multiplied by the nuclear materials professional hourly rate for FY 1995 of \$116 per hour. The data for the average number of professional staff hours needed to complete licensing actions were last updated in FY 1993 (58 FR 38666; July 20, 1993). For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals increase in over 70 percent of the cases.

Fourth, the NRC is streamlining the fee program and improving the predictability of fees by eliminating the materials "flat" inspection fees in § 170.31 and including the cost of the inspections in 10 CFR part 171. Eliminating the 10 CFR part 170 materials "flat" fees recognizes that the "regulatory service" to licensees, referred to in OBRA-90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only inspections, but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations, and other activities necessary to regulate classes of licensees. This action does not result in any net fee increases for affected licensees and will provide those licensees with greater fee predictability, a frequent request made in licensees' comments on past fee rules. The materials annual fees, which include the cost of inspections, become

effective for FY 1995, and those materials licensees who paid a "flat" 10 CFR part 170 fee for inspections conducted in FY 1995 will receive a credit for those payments towards the FY 1995 annual fee assessed under 10 CFR part 171. Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the reciprocity inspection fee has been combined with the application fee.

In summary, the NRC is (1) establishing two 10 CFR part 170 hourly rates; (2) revising the licensing fees assessed under 10 CFR part 170 in order to comply with the CFO Act's requirement that fees be revised to reflect the cost to the agency of providing the service; and (3) eliminating the materials "flat" inspection fees in § 170.31 and including the costs of inspections with the materials annual fees in § 171.16(d), or with the reciprocity application fee in § 170.31, fee Category 16.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Operating Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by NRC

Ten amendments have been made to 10 CFR part 171. First, the NRC is modifying its method for recovering certain budgeted costs. The NRC's February 23, 1994, report to Congress in response to EPA-92 identified fairness and equity concerns regarding the fees charged to recover the cost of certain NRC activities. Many licensees believed it was unfair to charge them fees for activities and policies undertaken by the NRC that did not benefit them and were not requested by them. The NRC is modifying its current policies for allocating the budgeted costs for these and other activities that cause fairness and equity concerns, including international activities, the nonprofit educational exemption, the 10 CFR part 170 statutory exemption for Federal agencies, the small entity annual fee reduction resulting from implementing the Regulatory Flexibility Act, certain Site Decommissioning Management Program (SDMP), generic decommissioning and reclamation activities, and regulatory activities that support both NRC and Agreement State licensees. The budgeted costs of approximately \$56 million for these activities have been allocated to the broadest base of NRC licensees because the activities are necessary for the NRC to carry out its responsibilities but, in most instances, go beyond the

regulation of those licensees or applicants that pay fees. Thus, the NRC is allocating the approximately \$56 million in fees for activities that raise fairness and equity concerns to the broadest base of NRC licensees, based on the budgeted dollars for the class of licensees. By allocating the costs in this way, the entire population of NRC licensees pay the costs. The allocation is based on the amount of the budget directly attributable to a class of licensees. This results in operating power reactors paying approximately 89 percent of the costs of the activities in question with other classes of licensees paying their respective share of these costs as follows: 3 percent to fuel facilities, 5 percent to materials licensees, and 1 percent to each of the spent fuel, uranium recovery and transportation classes of licensees.

Second, 10 CFR 171.13 is amended to provide that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year. Currently, the regulations provide for issuance of the proposed rule during the first quarter of the fiscal year.

Third, §§ 171.15 and 171.16 are amended to revise the annual fees for FY 1995 to recover approximately 100 percent of the FY 1995 budget authority, less fees collected under 10 CFR part 170 and funds appropriated from the NWF.

Fourth, the annual fees for operating power reactors in § 171.15(d) are revised to reflect a single uniform annual fee. The NRC is streamlining the fee program by assessing one uniform annual fee for all operating power reactors.

Fifth, as discussed earlier, the annual fees for materials licenses in § 171.16(d) include the budgeted costs for certain materials inspections which were previously recovered under 10 CFR 170.31.

Sixth, the NRC is refining the method for calculating the annual fees for fuel facilities and uranium recovery facilities. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities, it would reexamine the fuel facility subclass categorizations, and include any restructuring resulting from this reexamination in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC's revised methodologies for determining annual fees for fuel facility and uranium recovery licensees, described in the proposed rule, are based on this reexamination. These revised methodologies have been used to

determine the FY 1995 annual fees for both fuel facility and uranium recovery licensees. The use of the revised methodologies results in an annual fee that more accurately reflects the cost of providing regulatory services to each fuel facility and uranium recovery licensee. The revised methodologies are explained in more detail in Section IV—Section-by-Section Analysis.

Seventh, the NRC is modifying the lower-tier size standard for those licensees that qualify as a small entity under the NRC's size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending the NRC's size standards. The NRC adjusted its receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA final rule. The NRC also eliminated the separate \$1 million size standard for private practice physicians and applied the receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC also established a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and applies to the types of manufacturing industries that hold an NRC license.

The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. The existing maximum small entity annual fee of \$1800 is continued for all small entities except those defined as lower-tier small entities in this rule. The existing lower-tier small entity fee of \$400 will be assessed for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees, small governmental jurisdictions with a population of less than 20,000, and non-manufacturing entities with gross receipts of less than \$350,000, a higher threshold than the current lower-tier level of \$250,000 in gross receipts.

Eighth, Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the FY 1995 annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for

possession only/storage licenses prior to October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994, are subject to FY 1995 annual fees. This change is in recognition of the fact that since the final FY 1994 rule was published in July 1994, licensees have continued to file requests for termination of their licenses or certificates with the NRC. Other licensees have either called or written to the NRC since the FY 1994 final rule became effective requesting further clarification and information concerning the annual fees assessed. The NRC is responding to these requests as quickly as possible. However, the NRC was unable to respond and take action on all of the requests before the end of the fiscal year on September 30, 1994. Similar situations existed after the FY 1991, FY 1992, and FY 1993 rules were published, and in those cases, NRC provided an exemption from the requirement that the annual fee is waived only when a license is terminated before October 1 of each fiscal year.

Ninth, § 171.17 is amended to add a proration provision for materials licenses that are downgraded during the year to a lower fee category. This provision would permit those materials licensees who filed applications to downgrade their licenses to a lower fee category during the period October 1 through March 31 of a fiscal year to pay reduced annual fees.

Tenth, § 171.19 is amended to credit the quarterly partial annual fee payments and "flat" inspection fee payments for FY 1995 inspections already made by certain licensees in FY 1995 either toward their total annual fee to be assessed or to make refunds, if necessary.

The amounts to be collected through annual fees in the amendments to 10 CFR part 171 are based on the two revised professional hourly rates discussed previously in the summary of the changes to 10 CFR part 170. The amendments to 10 CFR part 171 do not change the underlying basis for 10 CFR part 171; that is, charging a class of licensees for NRC costs attributable to that class of licensees. The changes are consistent with the Congressional guidance in the Conference Committee Report on OBRA-90, which states that the "conferees contemplate that the NRC will continue to allocate generic costs that are attributable to a given class of licensees to such class" and the "conferees intend that the NRC assess the annual charge under the principle

that licensees who require the greatest expenditures of the agency's resources should pay the greatest annual fee" (136 Cong. Rec. at H12692-93). For those NRC costs not attributable to a class of licensees, the amendments to 10 CFR part 171 follow the conferees' guidance which states that "the Commission should assess the charges for these costs as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees * * *" (136 Cong. Rec. at H12692-3).

C. FY 1995 Budgeted Costs

The FY 1995 budgeted costs, by major activity, that will be recovered through 10 CFR parts 170 and 171 fees are shown in Table I.

TABLE I.—RECOVERY OF NRC'S FY 1995 BUDGET AUTHORITY
[Dollars in millions]

Recovery method	Estimated amount
Nuclear waste fund	\$22.0
Part 170 (license and inspection fees)	141.1
Other receipts1
Part 171 (annual fees):	
Power Reactors	262.2
Nonpower Reactors3
Fuel Facilities	10.1
Spent Fuel Storage	1.6
Uranium Recovery	1.8
Transportation	4.2
Material Users	124.7
Rare Earth Facilities1
Subtotal Part 171	\$305.0
Costs remaining to be recovered not identified above	57.4
Total	\$525.6

¹ Includes \$5.8 million that will not be recovered from small materials licensees because of the reduced small entity fees.

In addition to the \$57.4 million remaining to be recovered in Table I, approximately \$5.8 million must be collected as a result of continuing the \$1,800 maximum fee for small entities and the lower-tier small entity fee of \$400 for certain licensees. The composition of the \$63.2 million is as follows:

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE

Activities	Dollars in millions
Federal Agency Exemption	\$1.6
Nonprofit Educational Exemption	6.1
International Activities	10.5
Small Entity Subsidy	5.8

TABLE II.—ACTIVITIES TO BE RECOVERED THROUGH ASSESSMENT OF A SURCHARGE—Continued

Activities	Dollars in millions
Agreement State Oversight	6.2
Regulatory Support to Agreement States	14.2
Site Decommissioning Management Plan	6.2
Generic Decommissioning and Reclamation	5.6
Generic Low Level Waste (LLW)	7.0
Total	\$63.2

The NRC is continuing the existing policy for recovering the \$7 million for generic LLW activities from licensees that generate significant LLW. The revised method of allocation, described in detail in the FY 1993 final rule (58 FR 38669; July 20, 1994) allocates the LLW costs between two groups: large generators (power reactors and large fuel facilities) and small generators (all other LLW-producing licensees). The remaining \$56.2 million is distributed to virtually all classes of licensees based on the percentage of the total budget directly allocated to each class. The resulting allocations of the \$63.2 million are as follows:

\$55.2 million to operating power reactors;
 \$2.2 million to fuel facilities;
 \$.6 million to spent fuel storage licensees;
 \$.6 million to transportation licensees;
 \$.6 million to uranium recovery facilities; and
 \$4.0 million to other materials licensees.

IV. Section-by-Section Analysis

The following analysis of those sections that are amended by this final rule provides additional explanatory information. All references are to Title 10, Chapter I, U.S. Code of Federal Regulations.

Part 170

Section 170.11 Exemptions

This section is amended to conform the fee regulations to section 161 w. of the Atomic Energy Act of 1954, as amended (AEA). That section of the AEA currently allows the Commission to charge part 170 fees to power reactors operated by the Tennessee Valley Authority or other Federal government entities and to uranium enrichment facilities operated by the United States Enrichment Corporation (USEC), as these reactors and facilities are licensed or certified by the NRC. The NRC has been assessing the USEC 10 CFR part

170 fees under the authority provided in section 161w. of the AEA. In this final rule, the NRC is now amending § 170.11 to conform its regulations to this statutory provision. In all other cases, the NRC is prevented from charging 10 CFR part 170 fees to Federal agencies for services rendered, due to a prohibition on such charges contained in the Independent Offices Appropriation Act, 31 U.S.C. 9701.

Section 170.20 Average Cost Per Professional Staff Hour

This section is amended to establish two professional staff-hour rates based on FY 1995 budgeted costs—one for the reactor program and one for the nuclear material and nuclear waste program. Accordingly, the NRC reactor professional staff-hour rate for FY 1995 for all activities that are based on full cost under § 170.21 is \$123 per hour, or \$214,765 per direct FTE. The NRC nuclear material and nuclear waste professional staff-hour rate for all materials activities that are based on full cost under § 170.31 is \$116 per hour, or \$203,096 per direct FTE. The rates are based on the FY 1995 direct FTEs and NRC budgeted costs that are not recovered through the appropriation from the NWF. The NRC has used cost center concepts in reallocating certain costs to the reactor and materials programs in order to more closely align the budgeted costs with specific classes of licensees. The method used to determine the two professional hourly rates is as follows:

1. The direct program FTE levels are identified for both the reactor program and the nuclear material and waste program.

2. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rate because these support costs are charged directly through the various categories of fees.

3. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are to be collected by dividing them uniformly by the total number of direct FTEs for the program. In addition, Salary and Benefits plus contracts for General and Administrative Support are allocated to each program based on that program's salary and benefits. This method results in the following costs, to be included in the hourly rates.

TABLE III.—FY 1995 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

[Dollars in millions]		
Salary and benefits	Reactor program	Materials program
Program	\$148.5	\$43.5
Allocated Agency Management and Support	39.9	11.7
Subtotal	188.4	55.2
General and Administrative Support (G&A):		
Program Travel and Other Support	13.3	2.7
Allocated Agency Management and Support	73.6	21.6
Subtotal	86.9	24.3
Less offsetting receipts1
Total Budget Included in Hourly Rate	275.2	79.5
Program Direct FTEs	1,281.6	391.6
Rate per Direct FTE	214,765	203,096
Professional Hourly Rate	123	116

Dividing the \$275.2 million budget for the reactor program by the number of reactor program direct FTEs (1281.6) results in a rate for the reactor program of \$214,765 per FTE for FY 1995. Dividing the \$79.5 million budget for the nuclear materials and nuclear waste program by the number of program direct FTEs (391.6) results in a rate of \$203,096 per FTE for FY 1995. The Direct FTE Hourly Rate for the reactor program is \$123 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs (\$214,765) by the number of productive hours in one year (1744 hours) as indicated in OMB Circular A-76, "Performance of Commercial Activities." The Direct FTE Hourly Rate for the materials program is \$116 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTEs (\$203,096) by the number of productive hours in one year (1744 hours). The two professional rates of \$123 per hour and \$116 per hour are lower than the FY 1994 rate of \$133 per hour because the budget has been reduced and cost center concepts have been implemented with the effect that more direct FTEs have been charged to the programs.

Section 170.21 Schedule of Fees for Production and Utilization Facilities, Review of Standard Reference Design Approvals, Special Projects, Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are revised to reflect the FY 1995 budgeted costs and to recover costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule are based on the professional hourly rate, as shown in § 170.20, for the reactor program and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of this final rule will be assessed at the FY 1995 hourly rate for the reactor program as shown in § 170.20. Although the average amounts of time to review import and export licensing applications have not changed, the fees in § 170.21, facility Category K, have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those applications currently on file and pending completion, footnote 2 of § 170.21 is revised to provide that the professional hours expended up to the effective date of the final rule will be assessed at the professional rates in effect at the time the service was rendered. For topical report applications currently on file which are still pending completion of the review and for which review costs have reached the applicable fee ceiling established by the July 2, 1990 rule, the costs incurred after any applicable ceiling was reached through August 8, 1991, will not be billed to the applicant. Any professional hours expended for the review of topical report applications, amendments, revisions, or supplements to a topical report on or after August 9, 1991, are assessed at the applicable rate established by § 170.20.

Section 170.31 Schedule of Fees for Materials Licenses and Other Regulatory Services, Including Inspections and Import and Export Licenses

The licensing and inspection fees in this section, which are based on full-cost recovery, are modified to recover the FY 1995 costs incurred by the NRC in providing licensing and inspection services to identifiable recipients. The fees assessed for services provided under the schedule will be based on both the professional hourly rate as shown in § 170.20 for the materials program and any direct program support (contractual services) costs expended by

the NRC. Those licensing fees, which are based on the average time to review an application ("flat" fees), are adjusted to reflect both the revised average professional staff hours needed to process a licensing action (new license, renewal, and amendment) and the decrease in the professional hourly rate from \$133 per hour in FY 1994 to \$116 per hour in FY 1995. The "flat" materials inspection fees in § 170.31 are eliminated and combined with the materials annual fees in § 171.16(d). Because there is no annual fee for licensees operating under reciprocity in non-Agreement States, the application fee includes the costs of inspections.

As previously indicated, the CFO Act requires that the NRC conduct a review, on a biennial basis, of fees and other charges imposed by the agency for its services and revise those charges to reflect the costs incurred in providing the services. Consistent with the CFO Act requirement, the NRC has completed its most recent review of license and inspection fees assessed by the agency. The review focused on the flat fees that are charged to nuclear materials users for licensing actions (new licenses, renewals, and amendments). The full cost license and inspection fees (e.g., for fuel facilities) and annual fees were not included in this biennial review because the hourly rate for full cost fees and the annual fees are reviewed and updated annually in order to recover 100 percent of the NRC budget authority.

To determine the licensing flat fees for materials licensees and applicants, the NRC uses historical data to determine the average number of professional hours required to perform a licensing action for each license category. These average hours are multiplied by the revised materials program professional hourly rate of \$116 per hour for FY 1995. Because the professional hourly rate is updated annually and the NRC is eliminating materials "flat" inspection fees, the FY 1995 biennial review examined only the average number of hours per licensing action with regard to the 10 CFR Part 170 fees. The review indicated that the NRC needed to modify the average number of hours on which the current licensing flat fees are based in order to recover the cost of providing licensing services. The average number of hours required for licensing actions was last reviewed and modified in 1993 (58 FR 38666; July 20, 1993). Thus the revised hours used to determine the fees for FY 1995 reflect the changes in the licensing program that have occurred since that time. For example, new initiatives underway for certain types of licenses

and management guidance that reviewers conduct more detailed reviews of certain renewal applications based on historical enforcement actions in order to insure public health and safety have been incorporated into the revised fees. For new licenses and amendments, the licensing fees for FY 1995 are reduced in approximately 50 percent of the cases, while the fees for renewals have increased in over 70 percent of the cases.

The amounts of the licensing flat fees were rounded by applying standard rules of arithmetic so that the amounts rounded would be de minimis and convenient to the user. Fees that are greater than \$1,000 are rounded to the nearest \$100. Fees under \$1,000 are rounded to the nearest \$10.

The licensing flat fees are applicable to fee categories 1.C and 1.D; 2.B and 2.C; 3.A through 3.P; 4.B through 9.D, 10.B, 15A through 15E and 16. Applications filed on or after the effective date of the final rule are subject to the revised fees in this final rule. Although the average amounts of time to review import and export licensing applications have not changed, the fees in Category 15 have decreased from FY 1994 as a result of the decrease in the hourly rate.

For those licensing, inspection, and review fees assessed that are based on full-cost recovery (cost for professional staff hours plus any contractual services), the materials program hourly rate of \$116, as shown in § 170.20, applies to those professional staff hours expended on or after the effective date of the final rule.

Part 171

Section 171.13 Notice

The language in this section is revised to reflect more accurately when the NRC expects to publish its annual proposed fee rules. The NRC's experience indicates that the agency has been unable to publish the proposed rule during the first quarter of the fiscal year as indicated in the current FY 1994 rule. Therefore, this section is revised to indicate that the NRC will publish the proposed rule in the **Federal Register** as early as is practicable but no later than the third quarter of the fiscal year.

Section 171.15 Annual Fee: Reactor Operating Licenses

The annual fees in this section are revised to reflect FY 1995 budgeted costs. Paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to comply with the requirement of OBRA-90 to recover approximately 100 percent of the NRC budget for FY 1995. Table IV shows the

budgeted costs that are allocated directly to operating power reactors as part of the base annual fee. They have been expressed in terms of the NRC's FY 1995 programs and cost centers. The resulting total base annual fee amount for power reactors is shown, as well as the one uniform base annual fee that will be assessed to all operating reactors.

The NRC is streamlining the fee program by assessing one uniform base annual fee for all operating power reactors. During the past four years, the NRC has followed a somewhat lengthy and time consuming process in calculating the amount of the power reactor annual fees. The annual fees were determined in three ways. First, within the operating power reactor class, a distinction was made between the four vendor groups, that is, Babcock & Wilcox, Combustion Engineering, General Electric and Westinghouse. Second, within each vendor group, a distinction was made using the type of containment, for example, General

Electric Mark I, II or III. Third, a distinction was made based on the location of the reactor: whether or not it is located east or west of the Rocky Mountains. The NRC indicated in the FY 1991 rule (56 FR 31479; July 10, 1991) and again in its request for public comment on NRC fee policy (58 FR 21119; April 19, 1993) that it would be reexamining this approach with a view toward simplifying the method for determining annual fees and streamlining the fee process without causing an unfair burden. The NRC Office of the Inspector General (OIG), in its report dated October 26, 1993, on license fees, described the fee process as very detailed and labor intensive and stated that substantial effort is expended in attempting to make the process equitable and the costs reasonable. The OIG stated that the determination of the Part 171 fees could be simplified by eliminating and streamlining much of the detailed analyses performed as part of the process. This detailed breakdown of the reactor annual fees was

implemented when there were significant differences in the NRC research funding for the various types of reactors. This is no longer the case. For example, in FY 1991, the difference between the highest and lowest power reactor annual fee was \$229,000 and in FY 1993 the difference was \$96,000. The NRC, for FY 1995, calculated the reactor annual fees using both the current method (different fees for different types of reactors) and the uniform method. The uniform annual fee of \$2,936,000 is \$23,000 higher than the lowest fee under the current method, which is less than 1 percent of the \$2.9 million annual fee for an operating power reactor and \$11,000 lower than the highest fee under the current method. Because of this extremely small difference, the NRC is establishing a single uniform annual fee for each operating power reactor. Not only will this not cause an unfair burden, but it will allow the NRC to streamline the fee program and simplify the fee process.

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES¹

	Program total		Allocated to power reactors	
	Program support (\$,K)	Direct FTE	Program support (\$,K)	Direct FTE
Reactor Program				
Cost Center: Reactor Regulation:				
Inspections	\$4,350	471.4	\$4,350	471.4
Reactor Oversight	11,615	357.0	11,615	357.0
Reactor and Site Licensing	1,660	26.3	1,660	26.3
Reactor Aging and Renewal	19,973	54.7	19,973	54.7
Safety Assessment and Regulatory Development	33,687	69.5	33,687	69.5
Independent Analysis of Operational Experience	7,939	47.0	7,939	47.0
Technical Training and Qualification	4,728	19.0	4,728	19.0
Investigations, Enforcement and Legal Advice	11	59.0	11	59.0
Independent Review	536	42.0	536	42.0
Cost Center Total			\$84,499	1,145.9
Cost Center: Standard Reactor Designs:				
Design Certification	\$6,873	91.6	\$6,873	91.6
Safety Assessment	14,885	19.7	14,885	19.7
Legal Advice		3.0		3.0
Independent Review	86	10.0	86	10.0
Cost Center Total			\$21,844	124.3
Nuclear Materials and Nuclear Waste Program				
Cost Center: Fuel Facilities:				
Licensing and Inspection	1,304	28.5		.1
Cost Center: LLW and Decommissioning:				
Licensing and Inspection	50	2.6		.9
Reactor Decommissioning	100	6.7	100	6.7
Radiological Surveys	1,653		331	
Cost Center Total			\$431	7.6
Management and Support Programs				
Cost Center: Special Technical Programs:				
Educational Grants	\$1,050		\$1,050	
Small Business Innovation Research	1,844		1,844	

TABLE IV.—ALLOCATION OF NRC FY 1995 BUDGET TO POWER REACTORS' BASE FEES¹—Continued

	Program total		Allocated to power reactors	
	Program support (\$,K)	Direct FTE	Program support (\$,K)	Direct FTE
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	850	.7
Cost Center Total			\$3,744	.7
Reactor Program Total			\$110,518	1,278.6
Total base fee amount allocated to power reactors				² \$385.0 million
Less estimated part 170 power reactor fees				\$122.9 million
Part 171 amount for operating power reactors				\$262.1 million
Part 171 base fee for each operating reactor				\$262.1 million
				(³)

¹ Base annual fees include all costs attributable to the operating power reactor class of licensees. The base fees do not include costs allocated to power reactors for policy reasons.

² Amount is obtained by multiplying the direct FTE times the rate per FTE (\$214,765) and adding the program support funds.

³ 108 reactors=\$2,427,000 per reactor.

Paragraph (b)(3) is revised to establish the base uniform annual fee for each operating power reactor and to change the fiscal year references from FY 1994 to FY 1995.

Paragraphs (c)(1) and (c)(2) are amended to show the amount of the

budget allocated for policy reasons (surcharge) to operating reactors for FY 1995. This surcharge is added to the base annual fee for each operating power reactor. The purpose of this surcharge is to recover those NRC budgeted costs that are not directly or

solely attributable to operating power reactors but nevertheless must be recovered to comply with the requirements of OBRA-90.

The FY 1995 budgeted costs that are to be recovered in the surcharge from all licensees are as follows:

TABLE V
[In millions of dollars]

Category of costs	FY 1995 budgeted costs (\$ in millions)
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International cooperative safety program and international safeguards activities	10.5
b. Agreement State oversight	6.2
c. Low-level waste disposal generic activities; and	7.0
d. Site decommissioning management plan activities not recoverable under 10 CFR Part 170	5.6
2. Activities not assessed Part 170 licensing and inspection fees or Part 171 annual fees based on existing law or Commission policy:	
a. Fee Exemption of nonprofit educational institutions;	6.1
b. Licensing and inspection activities associated with other Federal agencies;	1.6
c. Costs not recovered from Part 171 for small entities	5.8
3. Activities supporting NRC operating licensees and Others.	
a. Regulatory support to Agreement States	14.2
b. Decommissioning-Reclamation	6.2
Total budgeted costs	63.2

Excluding low-level waste costs totalling \$7 million, the current policy allocates the remaining \$56.2 million based on three different methods. First, 100 percent of costs for certain activities (e.g., international activities and the nonprofit educational institution exemption) are allocated to operating power reactors, based on the guidance in the Conference Committee report accompanying OBRA-90 which stated that these types of costs may be recovered from such licensees as the Commission determines can fairly,

equitably and practicably contribute to their payment. The second method prorates the costs of some activities (e.g., small entity subsidy and Agreement State oversight) to all licensees under the implicit assumption that no one class of licensees should have to bear the full cost. Under the third method, 100 percent of the costs of some activities (e.g., SDMP and regulatory support to Agreement States) are allocated to the class of licensees to which the activities relate, independent of whether the activities are needed for

current licensees/applicants or support non-NRC licensees. In addition to being based on three different principles, the current policy creates significant annual fee problems for classes of licensees with a small or declining number of licensees. For example, as more states become Agreement States, the relatively fixed costs for generic regulatory activities (e.g., rulemaking, research, evaluation of operational data and policy development) that support both NRC and Agreement State licensees will be allocated to a smaller number of

materials licensees, causing the NRC materials licensees' annual fees to increase substantially. For example, if the four States who have expressed interest in becoming Agreement States do so within the next few years, then the remaining NRC materials licensees' annual fees would increase by about 30 percent from current levels.

Therefore, the NRC is changing the current policy for allocating the costs for activities which have raised fairness and equity concerns among many NRC licensees. The changes are based on the premise that these costs should be borne by all NRC licensees, because while the activities are necessary for the NRC to carry out its responsibilities, in most instances, they go beyond the regulation of those licensees or applicants that pay fees. Thus, the NRC has allocated the costs in question to the broadest base of NRC licensees that pay annual fees. The

allocation is based on the amount of the budget directly attributable to a class of licensees and results in, for instance, operating power reactors paying 89 percent of the cost of these activities, compared to approximately 50 percent of these costs in the FY 1994 rule.

This change is consistent with the guidance in the Conference Committee Report that accompanied OBRA-90. First, by allocating these costs to the broadest base of NRC licensees, this change is consistent with the Conference Report guidance that: "The Commission should assess the charge for these activities as broadly as practicable in order to minimize the burden for these costs on any licensee or class of licensees so as to establish as fair and equitable a system as is feasible." Second, allocating a higher percentage of these costs to operating power reactors as opposed to other

classes of licensees is also consistent with the Conference Report guidance that: "These expenses may be recovered from such licensees as the Commission, in its discretion, determines can fairly, equitably and practicably contribute to their payment." Allocating these costs to the universe of NRC licenses will minimize the impact of the declining numbers of licenses in any specific class, because the costs will be allocated over the maximum number of licensees. It will also put in place both a policy that will help mitigate future fee concerns associated with declining number of licenses, and a single methodology for allocating these types of costs, something that has been requested in comments submitted on previous proposed fee rules.

The annual additional charge for each operating power reactor is determined as follows:

Generic LLW Cost Allocated = $.74 \times \$6,972K = \$5,159K$

Other Activities Allocated = $.89 \times \$56,229K = \$50,044K$

Subtotal Budgeted Costs \$55,203K

Less Amount to be Assessed

to Small Older Reactors - 206K

Total Budgeted Costs \$54,997K

Total budgeted costs allocated	=	$\frac{\$54,997K}{108}$	= \$509,000 per operating power reactor
Total number of operating reactors		108	

With respect to Big Rock Point, a smaller older reactor, the NRC hereby grants a partial exemption from the FY 1995 annual fees similar to FY 1994 based on a request filed with the NRC in accordance with § 171.11. The total amount of \$0.2 million to be paid by Big Rock Point has been subtracted from the total amount assessed operating reactors as a surcharge.

Based on the information in Tables IV and V, each operating power reactor, except Big Rock Point, will pay a base annual fee of \$2,427,000 and an additional charge of \$509,000 for a total FY 1995 annual fee of \$2,936,000. The annual fee in this final rule is less than the annual fee shown in the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR Part 170 fees.

Paragraph (d) is revised to show the amount of the total FY 1995 uniform annual fee, including the surcharge, to be assessed to each operating power reactor.

Paragraph (e) is revised to show the amount of the FY 1995 annual fee for

nonpower (test and research) reactors. In FY 1995, \$339,000 in costs are attributable to those commercial and non-exempt Federal government organizations that are licensed to operate test and research reactors. Applying these costs uniformly to those nonpower reactors subject to fees results in an annual fee of \$56,500 per operating license. The Energy Policy Act of 1992 established an exemption for certain Federally-owned research reactors that are used primarily for educational training and academic research purposes, where the design of the reactor satisfies certain technical specifications set forth in the legislation. Consistent with this legislative requirement, the NRC granted an exemption from annual fees for FY 1992 and FY 1993 to the Veterans Administration Medical Center in Omaha, Nebraska, the U.S. Geological Survey for its reactor in Denver, Colorado, and the Armed Forces Radiobiological Institute in Bethesda, Maryland, for its research reactor. This

exemption was initially codified in the July 20, 1993 (58 FR 38695) final fee rule at § 171.11(a) and more recently in the March 17, 1994 (59 FR 12543) final rule at § 171.11(a)(2). The NRC amended § 171.11(a)(2) on July 20, 1994 (59 FR 36895) to exempt from annual fees the research reactor owned by the Rhode Island Atomic Energy Commission. The NRC will continue to grant exemptions from the annual fee to those Federally-owned and State owned research and test reactors who meet the exemption criteria specified in § 171.11.

Section 171.16 Annual fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule

changing its size standards. The SBA adjusted its receipts-based size standard levels to mitigate the effects of inflation from 1984 to 1994. On April 11, 1995 (60 FR 18344), the NRC published a final rule amending its size standards. The size standards are as follows:

(a) A small business is a for-profit concern and is a—

(1) Concern that provides a service or a concern not engaged in manufacturing with average gross receipts of \$5 million or less over its last three completed fiscal years; or

(2) Manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months.

(b) A small organization is a not-for-profit organization which is independently owned and operated and has annual gross receipts of \$5 million or less.

(c) A small governmental jurisdiction is a government of a city, county, town, township, village, school district, or special district with a population of less than 50,000.

(d) A small educational institution is one that is—

(1) Supported by a qualifying small governmental jurisdiction; or

(2) Not state or publicly supported and has 500 or fewer employees.

(e) For purposes of this section, the NRC shall use the Small Business Administration definition of receipts. (13 CFR 402(b)(2)). A licensee who is a subsidiary of a large entity does not qualify as a small entity for purposes of this section.

Therefore, the small entity categories in § 171.16(c) of this final fee rule have been modified to reflect the changes in the NRC's size standards. Consistent with the establishment of an employee size standard for manufacturers, the NRC is establishing a new maximum small entity fee for manufacturing industries with 35 to 500 employees at \$1,800 and a lower-tier small entity fee of \$400 is established for those manufacturing industries and educational institutions not State or publicly supported with less than 35 employees. The lower-tier receipts-based threshold of \$250,000 is raised to \$350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted

the receipts-based standard from \$3.5 million to \$5 million.

Section 171.16(d) is revised to reflect the FY 1995 budgeted costs for materials licensees, including Government agencies, licensed by the NRC. These fees are necessary to recover the FY 1995 generic and other regulatory costs totalling \$42.5 million that apply to fuel facilities, uranium recovery facilities, rare earth facilities, spent fuel facilities, holders of transportation certificates and QA program approvals, and other materials licensees, including holders of sealed source and device registrations.

Tables VI and VII show the NRC programs, cost centers, and resources that are attributable to fuel facilities and materials users, respectively. The costs attributable to the uranium recovery and rare earth classes of licensees are those associated with uranium recovery and rare earth licensing, inspection, and generic activities. For transportation, the costs are those budgeted for transportation licensing, inspection, and generic activities. Similarly, the budgeted costs for spent fuel storage are those for spent fuel storage licensing, inspection and generic activities.

TABLE VI.—ALLOCATION OF NRC FY 1995 BUDGET TO FUEL FACILITY BASE FEES¹

	Total program element		Allocated to fuel facility	
	Program support \$,K	FTE	Program support \$,K	FTE
Cost Center: Fuel Facilities:				
Fuel Fabricators Oversight and Inspections	\$1,698	59.0	\$1,486	56.1
Cost Center: LLW and Decommissioning:				
Decommissioning	4,447	50.0	325	1.7
Cost Center: Other Nuclear Materials and Waste:				
Independent Analysis of Operating Experience	346	8.0	69	1.6
Technical Training and Qualification	692	2.0	138	.4
Adjudicatory Reviews	-	1.0	-	.5
Investigations, Enforcement, Legal Advice	11	39.0	1	1.6
Cost Center: Special Technical Program:				
Nuclear Materials Mgt. and Safeguards System	1,165	1.0	47	-
Total			\$2,066	61.9
Total Base Fee Amount Allocated to Fuel Facilities				² \$14.6 million
Less Part 170 Fuel Facility Fees				4.5 million
Part 171 Base Fees for Fuel Facilities				\$10.1 million

¹ Base annual fee includes all costs attributable to the fuel facility class of licensees. The base fee does not include costs allocated to fuel facilities for policy reasons.

² Amount is obtained by multiplying the direct FTE times the rate per FTE (\$203,096) and adding the program support funds.

TABLE VII.—ALLOCATION OF FY 1995 BUDGET TO MATERIAL USERS' BASE FEES ¹

	Total program element		Allocated to materials users	
	Program support \$,K	FTE	Program support \$,K	FTE
Nuclear Materials & Nuclear Waste Program				
Cost Center: Materials Users:				
Licensing/Inspection of Materials Users	2,436	113.0	721	82.3
Materials Licensee Performance	700	1.8	189	.5
Materials Regulatory Standards	1,494	12.8	403	3.5
Radiation Protection Health Effects	1,621	5.3	438	1.4
Cost Center Total			1,751	87.7
Cost Center: LLW & Decommissioning:				
Licensing & Inspections	50	2.6		.2
Decommissioning	214	32.8	69	3.5
Radiological Surveys	1,653		372	
Cost Center Total			441	3.7
Cost Center: Other Nuclear Materials:				
Analysis of Operational Experience	346	8.0	184	1.7
Technical Training	692	2.0	498	1.4
Adjudicatory Reviews		1.0		.5
Investigations/Enforcement	11	39.0	9	24.4
Event Evaluation		16.0		4.4
Cost Center Total			691	32.4
Total Program			2,883	123.8
Management & Support Program				
Cost Center: Special Technical Programs:				
Nuclear Material Management & Safeguard Systems	1,165	1.0	74	.1
Total All Programs			2,957	123.9
Base Amount Allocated to Materials Users				² 28.1 million
Less Part 170 Materials Users Fees				3.4 million
Part 171 Base Fees For Materials Users				24.7 million

¹ Base annual fee includes all costs attributable to the materials class of licensees. The base fee does not include costs allocated to materials licensees for policy reasons.

² Amount is obtained by multiplying the direct FTE times the rate per FTE (\$203,096) and adding the program support funds.

Major Fuel Facilities

The allocation of the NRC's \$10.1 million in budgeted costs to the individual fuel facilities is based on the revised methodologies indicated earlier. The NRC indicated in its final FY 1994 fee rule that given the questions raised at that time by B&W Fuel Company, General Atomics, and other fuel facilities it would reexamine the fuel facility subclass categorizations and that any restructuring resulting from this reexamination would be included in the FY 1995 proposed rule for notice and comment (59 FR 36901; July 20, 1994). The NRC is therefore establishing a revised methodology for determining annual fees for fuel facilities. The revised methodology has been used to determine the FY 1995 annual fees. The objective of revising the methodology is to reflect more precisely agency generic costs attributable to fuel facility

licensees. This new methodology results in the creation of five fuel facility license fee categories. Licenses are grouped into these categories according to their license (nuclear material type, enrichment, form, quantity, and use/associated activity) and according to the scope, depth of coverage and rigor of generic regulatory programmatic effort applicable to each category. This methodology can be applied to determine fees for new licenses, current licenses and for licensees in unique license situations. In each case, the existing license was used to determine values for licensed nuclear material and its use without regard for current or planned licensee activities, which are at the discretion of the licensee.

The methodology is amenable to changes in the number of licenses, licensed material/activities, and total programmatic resources to be recovered through annual fees. When a license is

modified, given that NRC recovers approximately 100 percent of its generic regulatory program costs through fee recovery, this revised fuel facility fee methodology may result in a change in fee category and may have an effect on the fees assessed to other licensees. For example, if a fuel facility licensee amended its license so as to avoid part 171 fees for fuel facilities, the budget for the safety component would be spread only among those remaining licensees, resulting in a higher annual fee for those licensees.

Therefore, the methodology is applied as follows. First, a fee category is assigned based on certain criteria and the licensed nuclear material and use/associated activity. Although a licensee may choose not to fully utilize a license, the license is still used as the source for determining authorized nuclear material and use/associated activity. Next, the category/license information is used to

determine where the license will fit into the matrix. The matrix depicts the categorization of licenses by authorized material and use/activity and the relative programmatic effort associated

with each category. The programmatic effort (expressed as a value in the matrix) reflects the safety or safeguards significance associated with the authorized nuclear material and use/

activity, and the commensurate generic regulatory program (i.e., scope, depth and rigor). The relative weighted factors per facility for the various subclasses are as follows:

	Number of facilities	Relative weight per facility	
		Safety	Safeguards
High Enriched Fuel	2	1.00	1.00
Low Enriched Fuel	4	.52	.34
Limited Operations Facility	1	.20	.11
UF ₆ Conversion	1	.30
Others	3	.12	.09

The above weighted factors for the safety and safeguards portion are applied to the \$10.1 million base fee. To this base fee, the LLW and other surcharges are added. The resulting annual fee for each fuel facility, including the additional charge (surcharge) is shown below.

Type of facility	Annual fee
High Enriched Fuel:	
Babcock & Wilcox	\$2,569,000
Nuclear Fuel Services	2,569,000
Low Enriched Fuel:	
Combustion Engineering (Hematite)	1,261,000
General Electric	1,261,000
Siemens Nuclear Power	1,261,000
Westinghouse	1,261,000
Limited Operation Facilities:	
B&W Fuel Company	501,700
UF ₆ Conversion:	
AlliedSignal Corp	639,200
Other Fuel Facilities:	
Babcock & Wilcox	340,700
General Atomics	340,700
General Electric	340,700

Uranium Recovery

Of the \$2.3 million (\$1.8 million in base budget plus \$0.5 million in surcharge) attributable to the uranium recovery class of licensees, approximately \$1.9 million will be assessed to the Department of Energy (DOE) to recover the costs associated with DOE facilities under the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). In September 1993, DOE became a general licensee of the NRC because post-reclamation closure of the Spook, Wyoming site had been achieved. There are two additional UMTRCA sites now under the general license: Burrell, Pennsylvania and Loman, Idaho.

As indicated earlier, the NRC has refined its methodology for establishing part 171 annual fees for non-DOE uranium recovery licenses. The methodology identifies three categories of licenses: (1) Conventional uranium

mills; (2) solution mining uranium mills; and (3) mill tailings disposal facilities, each of which benefits from the generic uranium recovery program. In order to determine the benefits to each uranium recovery category, a matrix was established to relate the category and the level of benefit, by program element and subelement. The two major program elements of the generic uranium recovery program are activities related to facility operations and those related to facility closure. Each of these elements was further divided into three subelements. The three major subelements of generic activities related to uranium facility operations are activities related to: (1) The operation of the mill; (2) the handling and disposal of waste; and (3) prevention of groundwater contamination. The three major subelements of generic activities related to uranium facility closure are activities related to: (1) decommissioning of facilities and cleanup of land; (2) reclamation and closure of the tailings impoundment; and (3) cleanup of contaminated groundwater. Weighted factors were assigned to each program element and subelement.

The two existing categories of mills, those that perform conventional milling and those that perform solution mining and milling, are continued. The existing category for licenses whose purpose is to dispose of Section 11e.(2) byproduct material is also continued. The matrix also contains a category for conventional mills with Possession Only Licenses that are also authorized to dispose of more than 5,000 cubic yards of byproduct material, as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended, from other facilities. Currently, there are three mills authorized for such waste disposal. The applicability of the generic program in each subelement to each uranium recovery category was qualitatively

estimated as either significant, some, minor, or none.

The resulting relative weighted factor per facility for the various subclasses is as follows:

	Number of facilities	Relative weight per facility
Class I facilities	3	1.00
Class II facilities	6	.57
11e.(2) disposal	1	.73
11e.(2) disposal incidental to existing tailings sites	3	.13

Using this refined approach, the remaining \$0.4 million not recovered from DOE results in annual fees for each class of licensees as follows:

2.A.(2)—Class I facilities: \$60,900
 2.A.(2)—Class II facilities: \$34,400
 2.A.(2)—Other facilities: \$22,000
 2.A.(3)—11e(2) disposal: \$44,700
 2.A.(4)—11e(2) disposal incidental to existing tailings site: \$7,900

Rare Earth Facilities

Because rare earth facilities are now budgeted for separately, a separate class has been established for these licensees in this final rule. For rare earth facilities, the generic and other regulatory costs of \$66,000 have been spread uniformly among licensees who have a specific license for receipt and processing of source material. This results in an annual fee of \$22,000 for each facility.

Spent Fuel Storage Facilities

For spent fuel storage licenses, the costs of \$2.2 million (\$1.6 million in base budget plus \$0.6 million in surcharge) have been spread uniformly among those licensees who hold specific or general licenses for receipt and storage of spent fuel at an ISFSI. This results in an annual fee of \$279,000 for each facility. This represents a fee decrease compared to FY 1994 because there are now more licensees in this

class. It also represents a fee decrease compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR part 170 fees.

Materials Licenses

To equitably and fairly allocate the \$24.7 million directly attributable to the approximately 6,200 diverse material users and registrants plus the materials share (\$2.8 million) of the surcharge, the NRC has continued to base the annual fee on the 10 CFR Part 170 application fees and an estimated cost for inspections. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licensees based on how much it costs NRC to regulate each category. The fee calculation also continues to consider the inspection frequency, which is indicative of the safety risk and resulting regulatory costs associated with the categories of licensees. In summary, the annual fee for these categories of licenses is developed as follows:

Annual Fee=(Application Fee+Average Inspection Cost/Inspection Priority)×Constant+(Unique Category Costs).

The constant is the multiple necessary to recover \$24.7 million and is 1.7 for FY 1995. The unique costs are any special costs that the NRC has budgeted for a specific category of licensees. For FY 1995, unique costs of approximately \$1.0 million were identified for the medical improvement program which is attributable to medical licensees.

For the first time, the NRC is combining the "flat" material inspection fees in 10 CFR part 170 with the annual fees in 10 CFR part 171. This is being done to recognize that the "regulatory service" to licensees referred to in OBRA-90, comprises the total regulatory activities that NRC determines are needed to regulate a class of licensees. These regulatory services include not only "flat" fee inspections but also research, rulemaking, orders, enforcement actions, responses to allegations, incident investigations and other activities necessary to regulate classes of licensees. In addition to being consistent with the regulatory service concept in OBRA-90, the NRC believes that materials licensees' "flat" inspection fees can be combined with their annual fees without creating any significant questions of fairness. This is because the concept of the annual fee, including the inspection fee, has, in

effect, already been implemented for most materials licensees. First, materials licensees currently pay a "flat fee" per inspection based on the average cost of an inspection for their fee category, and second, the routine inspection frequency is identical for most licensees in the same fee category. Furthermore, past experience suggests that less than 10 percent of the materials inspections for these licensees are nonroutine. Thus, licensees in the same materials license fee category currently pay essentially the same average annual cost for inspections. Therefore, combining inspection and annual fees results in essentially the same average cost per license over time. Additionally, this approach will provide materials licensees with simpler and more predictable NRC fee charges as there will be no additional fees paid for periodic inspections. Because certain materials FY 1995 annual fees include inspection costs, those materials licensees who paid a "flat" 10 CFR part 170 inspection fee for inspections conducted in FY 1995 will receive a credit for those payments towards their FY 1995 annual fee assessed under 10 CFR part 171. Those Agreement state licensees who paid an inspection fee for inspections conducted in FY 1995 will not receive a credit-refund because they pay no annual fee.

Materials annual fees for FY 1995 have decreased compared to the FY 1994 annual fees. There are two basic reasons for this. First, the FY 1995 budgeted amount attributable to materials licensees is about 35 percent lower than the comparable FY 1994 amount, based on the reallocation of certain materials budgeted costs to the broadest base of NRC licensees rather than to materials licensees as discussed earlier. Second, the professional hourly rate for the materials program has decreased from \$133 per hour to \$116 per hour, due to the use of cost center concepts in allocating NRC budgeted costs. These decreases are partially offset by a decrease in the number of licensees to be assessed annual fees in FY 1995 (from about 6,500 to about 6,200) and the inclusion of the average annual inspection costs with the annual fee. The annual fees for some categories in this final rule have decreased compared to the proposed rule because of higher estimated collections anticipated in FY 1995 from 10 CFR part 170 fees.

A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526.

Transportation

To recover the \$4.7 million attributable to the transportation class of licensees, \$1.2 will be assessed to the Department of Energy (DOE) to cover all of its transportation casks under Category 18. The remaining transportation costs for generic activities (\$3.5 million) are allocated to holders of approved QA plans. The annual fee for approved QA plans is \$77,800 for users and fabricators and \$1,000 for users only.

The amount or range of the FY 1995 annual fees for all materials licensees is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel.	\$2,569,000.
Part 70—Low enriched fuel.	1,261,000.
Part 40—UF ₆ conversion.	639,200.
Part 40—Uranium recovery.	22,000 to 60,900.
Part 30—Byproduct Material.	480 to 23,200. ¹
Part 71—Transportation of Radioactive Material.	1,000 to 77,800.
Part 72—Independent Storage of Spent Nuclear Fuel.	279,000.

¹ Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is \$415,300.

Surcharge

Section 171.16(e) is amended to establish the additional charge which is included in the annual fees shown in § 171.16(d) of this final rule. The Commission is continuing the approach established in FY 1993 to assess the budgeted low-level waste (LLW) costs to two broad categories of licensees (large LLW generators and small LLW generators) based on historical disposal data. This surcharge is included in the annual fees for the applicable categories in § 171.16(d). Although these NRC LLW disposal regulatory activities are not directly attributable to regulation of NRC materials licensees, the costs nevertheless must be recovered in order to comply with the requirements of OBRA-90. For FY 1995, the additional charge recovers approximately 18 percent of the NRC budgeted costs of \$7.0 million relating to LLW disposal generic activities from small generators, which are comprised of materials licensees that dispose of LLW. The percentage distribution reflects the

deletion of costs for LLW disposed of by Agreement State licensees. Of the \$7.0 million in budgeted costs shown above for LLW activities, 82 percent of the amount (\$5.7 million) is allocated to the 119 large waste generators (reactors and fuel facilities) included in 10 CFR part 171. This results in an additional charge of \$48,000 per facility. Thus, the LLW charge will be \$48,000 per HEU, LEU, UF₆ facility, and each of the other three fuel facilities. The remaining \$1.3 million is allocated to the materials licensees in categories that generate low-level waste (895 licensees) as follows: \$1,400 per materials license except for those in Category 17. Those licensees that generate a significant amount of low-level waste for purposes of the calculation of the \$1,400 surcharge are in fee Categories 1.B, 1.D, 2.C, 3.A, 3.B, 3.C, 3.L, 3.M, 3.N, 4.A, 4.B, 4.C, 4.D, 5.B, 6.A, and 7.B. The surcharge for licenses in fee Category 17, which also generate and/or dispose of low-level waste, is \$21,000.

Certain costs that caused fairness and equity concerns are allocated to materials licensees based on the percent of the budget that each class comprises. This allocation approach was explained in the previous explanation of changes to § 171.15 of this section.

Footnote 1 of 10 CFR 171.16(d) is amended to provide for a waiver of the annual fees for those materials licensees, and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals, or filed for possession only/storage only licenses before October 1, 1994, and permanently ceased licensed activities entirely by September 30, 1994. All other licensees and approval holders who held a license or approval on October 1, 1994 are subject to the FY 1995 annual fees.

Section 171.17 Proration

10 CFR 171.17 is amended to add a proration provision to allow for proration of the annual fee for a downgraded materials license upon request of the licensee. A proration request must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded materials license filed beyond that date will not be considered.

Annual fees for materials licenses downgraded after October 1 of a fiscal year will be prorated on the basis of when the applications for downgrade are received by the NRC, provided the licensee permanently ceased the stated

activities during the specified period. Annual fees for materials licenses for which applications to downgrade are filed during the period October 1 through March 31 of the fiscal year will be prorated as follows: (1) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and (2) licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories. Materials licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that fiscal year.

Section 171.19 Payment

This section is revised to give credit for partial payments made by certain licensees in FY 1995 toward their FY 1995 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 1995 will have been made by operating power reactor licensees and some materials licensees before the final rule is effective. Therefore, the NRC will credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC will adjust the fourth quarterly bill in order to recover the full amount of the revised annual fee, or to make refunds, as necessary. The NRC also expects that certain materials licensees will have paid inspection fees for inspections that were performed in FY 1995, whereas this final rule includes such costs in the annual fee. The FY 1995 annual fee bills will reflect a credit for these inspection fee payments. As in FY 1994, payment of the annual fee is due on the effective date of the rule and interest accrues from the effective date of the rule. However, interest will be waived if payment is received within 30 days from the effective date of the rule.

During the past four years many licensees have indicated that although they held a valid NRC license authorizing the possession and use of special nuclear, source, or byproduct material, they were in fact either not using the material to conduct operations or had disposed of the material and no longer needed the license. In responding to licensees about this matter, the NRC has stated that annual fees are assessed

based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. Whether or not a licensee is actually conducting operations using the material is a matter of licensee discretion. The NRC cannot control whether a licensee elects to possess and use radioactive material once it receives a license from the NRC. Therefore, the NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material. To remove any uncertainty, the NRC issued minor clarifying amendments to 10 CFR 171.16, footnotes 1 and 7 on July 20, 1993 (58 FR 38700).

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in its decision of *National Cable Television Association, Inc. v. United States*, 415 U.S. 36 (1974) and *Federal Power Commission v. New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia, *National Cable Television Association v. Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters v. Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic*

Industries Association v. Federal Communications Commission, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc. v. Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). These decisions of the Courts enabled the Commission to develop fee guidelines that are still used for cost recovery and fee development purposes.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co. v. U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). The Court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed Pub. L. 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90) which required that for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA-90 was amended in 1993 to extend the 100 percent fee recovery requirement for NRC through 1998. To accomplish this statutory requirement, the NRC, in accordance with § 171.13, is publishing the final amount of the FY 1995 annual fees for operating reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA-90 and the Conference Committee Report specifically state that—

(1) The annual fees be based on the Commission's FY 1995 budget of \$525.6 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

The NRC is establishing a uniform annual fee rather than an annual fee that considers the various vendors, the types of containment, and the location of the operating power reactors. The NRC believes the difference in annual fees of about \$20,000 between the highest and lowest annual fee assessed under the current method is small enough relative to the size of the \$2.9 million annual fees, to justify moving to a uniform annual fee particularly in light of the administrative savings that will follow. The annual fees for fuel cycle licensees, materials licensees, and holders of certificates, registrations and approvals and for licenses issued to Government agencies take into account the type of facility or approval and the classes of the licensees.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company v. United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

10 CFR parts 170 and 171, which established fees based on the FY 1989 budget, were also legally challenged. As a result of the Supreme Court decision in *Skinner v. Mid-American Pipeline Co.*, 109 S. Ct. 1726 (1989), and the denial of certiorari in *Florida Power and Light*, all of the lawsuits were withdrawn.

The NRC's FY 1991 annual fee rule was largely upheld by the D.C. Circuit Court of Appeals in *Allied Signal v. NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 1995. The final rule results in a decrease in the annual fees charged to most licensees, and holders of certificates, registrations, and approvals,

including those licensees who are classified as small entities under the Regulatory Flexibility Act. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these final amendments do not require the modification of or additions to systems, structures, components, or design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source Material, Special Nuclear Material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93-4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101-576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.11, paragraph (a)(5) is revised to read as follows:

§ 170.11 Exemptions.

(a) * * *

(5) A construction permit, license, certificate of compliance, or other

approval applied for by, or issued to, a Government agency, except where the Commission is authorized by statute to charge such fees.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections

under §§ 170.21 and 170.31 that are based upon the full costs for the review or inspection will be calculated using the following applicable professional staff-hour rates:

Reactor Program (§ 170.21 Activities).	\$123 per hour.
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities).	\$116 per hour.

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees		Fees ^{1 2}
* * * * *		
K. Import and export licenses:		
Licenses for the import and export only of production and utilization facilities or the import and export only of components for production and utilization facilities issued pursuant to 10 CFR part 110:		
1. Application for import or export of reactors and other facilities and components which must be reviewed by the Commission and the Executive Branch, for example, actions under 10 CFR 110.40(b):		
Application—New license		\$7,500
Amendment		\$7,500
2. Application for import or export of reactor components and initial exports of other equipment requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8):		
Application—New license		\$4,600
Amendment		\$4,600
3. Application for export of components requiring foreign government assurances only:		
Application—New license		\$2,900
Amendment		\$2,900
4. Application for export or import of other facility components and equipment not requiring Commission review, Executive Branch review, or foreign government assurances:		
Application—New license		\$1,200
Amendment		\$1,200
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require analysis or review:		
Amendment		\$120

¹ Fees will not be charged for orders issued by the Commission pursuant to § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g. §§ 50.12, 73.5) and any other sections now or hereafter in effect regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

² Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. In no event will the total review costs be less than twice the hourly rate shown in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U-235 in unsealed form or 200 grams or more of U-233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers: ⁴	
Application—New license	\$530.
Renewal	\$720.
Amendment	\$290.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A: ⁴	
Application—New license	\$580.
Renewal	\$650.
Amendment	\$280.
E. Licenses for construction and operation of a uranium enrichment facility:	
Application	\$125,000.
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
2. Source material:	
A. (1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
License, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
(2) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal except those licenses subject to fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1).	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses which authorize the possession, use and/or installation of source material for shielding:	
Application—New license	\$150.
Renewal	\$170.
Amendment	\$230.
C. All other source material licenses:	
Application—New license	\$2,700.
Renewal	\$1,500.
Amendment	\$400.
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	\$2,900.
Renewal	\$1,900.
Amendment	\$530.
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application—New license	\$1,200.
Renewal	\$2,400.
Amendment	\$560.
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material:	
Application—New license	\$3,900.
Renewal	\$3,100.
Amendment	\$500.
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material:	
Application—New license	\$1,500.
Renewal	\$480.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
Amendment	\$420.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application—New license	\$1,200.
Renewal	\$820.
Amendment	\$350.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	\$1,500.
Renewal	\$1,100.
Amendment	\$360.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes:	
Application—New license	\$5,800.
Renewal	\$5,200.
Amendment	\$750.
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	\$2,300.
Renewal	\$2,700.
Amendment	\$990.
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter:	
Application—New license	\$4,300.
Renewal	\$2,600.
Amendment	\$840.
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	\$1,500.
Renewal	\$1,500.
Amendment	\$280.
K. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter:	
Application—New license	\$1,300.
Renewal	\$1,300.
Amendment	\$300.
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	\$4,100.
Renewal	\$3,300.
Amendment	\$640.
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application—New license	\$1,500.
Renewal	\$1,700.
Amendment	\$590.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D:	
Application—New license	\$1,800.
Renewal	\$1,900.
Amendment	\$570.
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations:	
Application—New license	\$3,700.
Renewal	\$3,000.
Amendment	\$700.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application—New license	\$530.
Renewal	\$720.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2,3}
Amendment	\$290.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
License, renewal, amendment	Full Cost.
Inspections	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	\$3,200.
Renewal	\$2,300.
Amendment	\$390.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application—New license	\$1,700.
Renewal	\$1,200.
Amendment	\$280.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application—New license	\$3,100.
Renewal	\$4,000.
Amendment	\$610.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
License, renewal, amendment	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application—New license	\$4,900.
Renewal	\$1,900.
Amendment	\$770.
7. Human use of byproduct, source, or special nuclear material:	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	\$2,700.
Renewal	\$1,400.
Amendment	\$450.
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	\$2,900.
Renewal	\$5,700.
Amendment	\$560.
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application—New license	\$1,300.
Renewal	\$1,400.
Amendment	\$430.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application—New license	\$730.
Renewal	\$630.
Amendment	\$340.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	\$3,200.
Amendment—each device	\$1,200.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	\$1,600.
Amendment—each device	\$580.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	\$700.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees ¹	Fee ^{2 3}
Amendment—each source	\$230.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	\$350.
Amendment—each source	\$120.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
B. Evaluation of 10 CFR part 71 quality assurance programs:	
Application—Approval	\$320.
Renewal	\$340.
Amendment	\$240.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
12. Special projects: ⁵	
Approvals and preapplication/licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Approvals	Full Cost.
Amendments, revisions, and supplements	Full Cost.
Reapproval	Full Cost.
B. Inspections related to spent fuel storage cask:	
Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72 of this chapter:	
Approval, Renewal, Amendment	Full Cost.
Inspections	Full Cost.
15. Import and Export licenses:	
Licenses issued pursuant to 10 CFR part 110 of this chapter for the import and export only of special nuclear material, source material, byproduct material, heavy water, tritium, or nuclear grade graphite:	
A. Application for import or export of HEU and other materials which must be reviewed by the Commission and the Executive Branch, for example, those actions under 10 CFR 110.40(b):	
Application—new license	\$7,500.
Amendment	\$7,500.
B. Application for import or export of special nuclear material, heavy water, nuclear grade graphite, tritium, and source material, and initial exports of materials requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(2)–(8):	
Application—new license	\$4,600.
Amendment	\$4,600.
C. Application for export of routine reloads of LEU reactor fuel and exports of source material requiring foreign government assurances only:	
Application—new license	\$2,900.
Amendment	\$2,900.
D. Application for export or import of other materials not requiring Commission review, Executive Branch review or foreign government assurances:	
Application—new license	\$1,200.
Amendment	\$1,200.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information or make other revisions which do not require analysis or review:	
Amendment	\$120.
16. Reciprocity:	
Agreement State licensees who conduct activities in a non-Agreement State under the reciprocity provisions of 10 CFR 150.20:	
Application (initial filing of Form 241)	\$1,100.
Renewal	N/A.
Revisions	\$200.

¹ *Types of fees*—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees*—Applications for new materials licenses and approvals; applications to reinstate expired, terminated or inactive licenses and approvals except those subject to fees assessed at full cost; and applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20, must be accompanied by the prescribed application fee for each category, except that:

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category; and

(2) Applications for licenses under Category 1E must be accompanied by an application fee of \$125,000.

(b) *License-approval-review fees*—Fees for applications for new licenses and approvals and for preapplication consultations and reviews subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b), (e), and (f).

(c) *Renewal-reapproval fees*—Applications for renewal of licenses and approvals must be accompanied by the prescribed renewal fee for each category, except that fees for applications for renewal of licenses and approvals subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(d).

(d) *Amendment-Revision Fees*—

(1) Applications for amendments to licenses and approvals and revisions to reciprocity initial applications, except those subject to fees assessed at full costs, must be accompanied by the prescribed amendment-revision fee for each license-revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply. For those licenses and approvals subject to full costs (fee Categories 1A, 1B, 1E, 2A, 4A, 4D, 5B, 10A, 11, 12, 13A, and 14), amendment fees are due upon notification by the Commission in accordance with § 170.12(c).

(2) An application for amendment to a materials license or approval that would place the license or approval in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for the new category.

(3) An application for amendment to a license or approval that would reduce the scope of a licensee's program to a lower fee category must be accompanied by the prescribed amendment fee for the lower fee category.

(4) Applications to terminate licenses authorizing small materials programs, when no dismantling or decontamination procedure is required, are not subject to fees.

(e) *Inspection fees*—Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. The fees assessed at full cost will be determined based on the professional staff time required to conduct the inspection multiplied by the rate established under § 170.20 plus any applicable contractual support services costs incurred. Inspection fees are due upon notification by the Commission in accordance with § 170.12(g).

² Fees will not be charged for orders issued by the Commission pursuant to 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections now or hereafter in effect) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

³ Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For those applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed \$50,000. Costs which exceed \$50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20. The minimum total review cost is twice the hourly rate shown in § 170.20.

⁴ Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except in those instances in which an application deals only with the sealed sources authorized by the license. Applicants for new licenses or renewal of existing licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application or renewal fee for fee Category 1C only.

⁵ Fees will not be assessed for requests-reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR OPERATING LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99-272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100-203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101-239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101-508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92-314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102-486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. Section 171.13 is revised to read as follows:

§ 171.13 Notice.

The annual fees applicable to an operating reactor and to a materials licensee, including a Government agency licensed by the NRC, subject to this part and calculated in accordance with §§ 171.15 and 171.16, will be published as a notice in the **Federal Register** as soon as is practicable but no later than the third quarter of FY 1996 through 1998. The annual fees will become due and payable to the NRC in accordance with § 171.19 except as provided in § 171.17. Quarterly payments of the annual fees of \$100,000 or more will continue during the fiscal year and be based on the applicable annual fees as shown in §§ 171.15 and 171.16 of the regulations until a notice concerning the revised amount of the fees for the fiscal year is published by Commission.

8. In § 171.15, paragraphs (a), (b)(3), (c)(1), (c)(2), (d), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor operating licenses.

(a) Each person licensed to operate a power, test, or research reactor shall pay the annual fee for each unit for which the person holds an operating license at any time during the Federal FY in which the fee is due, except for those test and research reactors exempted in § 171.11(a)(1) and (a)(2).

(b) * * *

(3) Generic activities required largely for NRC to regulate power reactors, e.g., updating part 50 of this chapter, or operating the Incident Response Center. The base FY 1995 annual fee for each operating power reactor subject to fees under this section and which must be collected before September 30, 1995, is \$2,427,000. The total annual fee to be assessed to each operating power reactor which would include the surcharge for each reactor is shown in paragraph (d) of this section.

(c)(1) An additional charge will be established and added to the base

annual fee for each operating power reactor to recover the budgeted costs for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and low-level waste disposal generic activities, and

(ii) Activities not currently assessed under 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

(2) The FY 1995 surcharge for each operating power reactor is \$509,000. This amount is calculated by dividing the total cost for these activities (\$55.0 million) by the number of operating power reactors (108).

* * * * *

(d) The FY 1995 part 171 annual fee for each operating power reactor, which includes the surcharge in paragraph (c)(2) of this section, is \$2,936,000. Thereafter, annual fees will be assessed in accordance with § 171.13.

(e) The annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under

part 50 of this chapter, except for those reactors exempted from fees under § 171.11(a), are as follows:

Research reactor	\$56,500
Test reactor	\$56,500

* * * * *

9. In § 171.16, the introductory text of paragraph (c) and paragraphs (c)(1), (c)(4), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government agencies licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification, the licensee may pay reduced annual fees for FY 1995 as follows:

	Maximum Annual fee per licensed category
Small businesses not engaged maximum annual fee in manufacturing and small per licensed category not-for-profit organizations (gross annual receipts):	
\$350,000 to \$5 million ..	\$1,800
Less than \$350,000	400

	Maximum Annual fee per licensed category
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (population)	
20,000 to 50,000	1,800
Less than 20,000	400
Educational institutions that are not State or publicly supported, and have 500 employees or less:	
35 to 500 employees	1,800
Less than 35 employees	400

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

* * * * *

(4) For FY 1995, the maximum annual fee (base annual fee plus surcharge) a small entity is required to pay is \$1,800 for each category applicable to the licensee(s).

(d) The FY 1995 annual fees, including the surcharges shown in paragraph (e) of this section, for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are as follows:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees ^{1 2 3}
1. Special nuclear material:	
A. (1) Licenses for possession and use of U-235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox	SNM-42 \$2,569,000
Nuclear Fuel Services	SNM-124 2,569,000
(b) Low Enriched Uranium in Dispersable Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite)	SNM-33 1,261,000
General Electric Company	SNM-1097 1,261,000
Siemens Nuclear Power	SNM-1227 1,261,000
Westinghouse Electric Company	SNM-1107 1,261,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations:	
B&W Fuel Company	SNM-1168 501,700
(b) All Others:	
Babcock & Wilcox	SNM-414 340,700
General Atomics	SNM-696 340,700
General Electric	SNM-960 340,700
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI)	279,000
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,300

D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,000
E. Licenses for the operation of a uranium enrichment facility	¹¹ N/A
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride	639,200
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities ⁴	60,900
Class II facilities ⁴	34,400
Other facilities ⁴	22,000
(3) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) .	44,700
(4) Licenses that authorize the receipt, from other persons, of byproduct material as defined in Section 11e.(2) of the Atomic Energy Act for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	7,900
B. Licenses which authorize only the possession, use and/or installation of source material for shielding	480
C. All other source material licenses	8,600
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	16,400
B. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	5,500
C. Licenses issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	11,100
D. Licenses and approvals issued pursuant to §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when included on the same license	4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units)	3,100
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	3,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	19,400
H. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	5,000
I. Licenses issued pursuant to subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter	8,800
J. Licenses issued pursuant to subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,700
K. Licenses issued pursuant to subpart B of part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter	3,200
L. Licenses of broad scope for possession and use of byproduct material issued pursuant to parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	12,100
M. Other licenses for possession and use of byproduct material issued pursuant to part 30 of this chapter for research and development that do not authorize commercial distribution	5,400
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, 4C, and 4D	6,000
O. Licenses for possession and use of byproduct material issued pursuant to part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized pursuant to part 40 of this chapter when authorized on the same license	13,900
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	1,700

4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	⁵ 100,900
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	14,300
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	7,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	8,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	13,000
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	14,500
7. Human use of byproduct, source, or special nuclear material.	
A. Licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	10,200
B. Licenses of broad scope issued to medical institutions or two or more physicians pursuant to parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license ⁹	23,200
C. Other licenses issued pursuant to parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license ⁹	4,600
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,800
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	7,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	3,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,500
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	770
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	⁶ N/A
Other Casks	⁶ N/A
B. Approvals issued of 10 CFR part 71 quality assurance programs.	
Users and Fabricators	77,800
Users	1,000
11. Standardized spent fuel facilities	⁶ N/A
12. Special Projects	⁶ N/A
13. A. Spent fuel storage cask Certificate of Compliance	⁶ N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	279,000
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities pursuant to 10 CFR parts 30, 40, 70, and 72	⁷ N/A
15. Import and Export licenses	⁸ N/A
16. Reciprocity	⁸ N/A
17. Master materials licenses of broad scope issued to Government agencies	415,300
18. Department of Energy:	
A. Certificates of Compliance	¹⁰ 1,200,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	1,937,000

¹ Annual fees will be assessed based on whether a licensee held, during the fiscal year, a valid license with the NRC authorizing possession and use of radioactive material. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1994 and permanently ceased licensed activities entirely by September 30, 1994. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a POL during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees of Category 1.C and 1.D for sealed sources authorized in the license.

² Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, or 72 of this chapter.

³ For FYs 1996 through 1998, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

⁴ A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

⁵ Two licenses have been issued by NRC for land disposal of special nuclear material. Once NRC issues a LLW disposal license for byproduct and source material, the Commission will consider establishing an annual fee for this type of license.

⁶ Standardized spent fuel facilities, part 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

⁷ Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

⁸ No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

⁹ Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

¹⁰ This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

¹¹ No annual fee has been established because there are currently no licensees in this particular fee category.

(e) A surcharge is added for each category for which a base annual fee is required. The surcharge consists of the following:

(1) To recover costs relating to LLW disposal generic activities, an additional charge of \$48,000 has been added to fee Categories 1.A.(1), 1.A.(2) and 2.A.(1); an additional charge of \$1,400 has been added to fee Categories 1.B., 1.D., 2.C., 3.A., 3.B., 3.C., 3.L., 3.M., 3.N., 4.A., 4.B., 4.C., 4.D., 5.B., 6.A., and 7.B.; and an additional charge of \$21,000 has been added to fee Category 17.

(2) To recover those budgeted costs that are not directly or solely attributable to materials licensees and holders of certificates, registrations or approvals, a surcharge has been added for the following:

(i) Activities not attributable to an existing NRC licensee or classes of licensees; e.g., international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities and

(ii) Activities not currently assessed under 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, e.g., reviews and inspections conducted of nonprofit educational institutions and Federal agencies; activities related to decommissioning and reclamation and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

10. In § 171.17, paragraph (b) is revised to read as follows:

§ 171.17 Proration.

* * * * *

(b) Materials licenses (including fuel cycle licenses). (1) *New licenses and terminations.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of

the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY. The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or after April 1 of the FY are assessed the full annual fee for that FY.

(2) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category(ies) and one-half the annual fee for the lower fee category(ies), and, if applicable, the full

annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications for downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

11. In § 171.19, paragraphs (b) and (c) are revised to read as follows:

§ 171.19 Payment.

* * * * *

(b) For FY 1995 through FY 1998, the Commission will adjust the fourth quarterly bill for operating power reactors and certain materials licensees to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. The NRC will also adjust the FY 1995 annual fee bills to reflect a credit for any payments received for those FY 1995 inspection costs that are included in the FY 1995 annual fee. All other licensees, or holders of a certificate, registration, or approval of a QA program will be sent a bill for the full amount of the annual fee upon publication of the final rule. Payment is due on the effective date of the final rule and interest accrues from the effective date of the final rule. However, interest will be waived if payment is received within 30 days from the effective date of the final rule.

(c) For FYs 1995 through 1998, annual fees in the amount of \$100,000 or more and described in the **Federal Register** notice pursuant to § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. Annual fees of less than \$100,000 must be paid once a year as billed by the NRC.

Dated at Rockville, Maryland, this 12th day of June, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Appendix A to this Final Rule Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) establishes as a principle of regulatory practice that agencies endeavor to fit regulatory and informational requirements, consistent with applicable statutes, to a scale commensurate with the businesses, organizations, and government jurisdictions to which they apply. To achieve this principle, the Act requires that agencies consider the impact of their actions on small entities. If the agency cannot certify that a rule will not significantly impact a substantial number of small entities, then a regulatory flexibility analysis is required to examine the impacts on small entities and the alternatives to minimize these impacts.

To assist in considering these impacts under the Regulatory Flexibility Act (RFA), first the NRC adopted size standards for determining which NRC licensees qualify as small entities (50 FR 50241; December 9, 1985). These size standards were clarified November 6, 1991 (56 FR 56672). On April 7, 1994 (59 FR 16513), the Small Business Administration (SBA) issued a final rule changing its size standards. The SBA adjusted its receipts-based size standards levels to mitigate the effects of inflation from 1984 to 1994. On November 30, 1994 (59 FR 61293), the NRC published a proposed rule to amend its size standards. The NRC proposed to adjust its receipts-based size standards from \$3.5 million to \$5 million to accommodate inflation and to conform to the SBA final rule. The NRC also proposed to eliminate the separate \$1 million size standard for private practice physicians and to apply a receipts-based size standard of \$5 million to this class of licensees. This mirrors the revised SBA standard of \$5 million for medical practitioners. The NRC also proposed to establish a size standard of 500 or fewer employees for business concerns that are manufacturing entities. This standard is the most commonly used SBA employee standard and would be the standard applicable to the types of manufacturing industries that hold an NRC license. After evaluating the two comments received, a final rule that would revise the NRC's size standards as proposed was developed and approved by the SBA on March 24, 1995. The NRC published the final rule revising its size standards on April 11, 1995 (60 FR 18344). The revised standards became effective May 11, 1995. The NRC has used the revised standards in the final FY 1995 fee rule. The small entity fee categories in § 171.16(c) of the final rule reflect the changes in the NRC's size standards. A new maximum small entity fee for manufacturing industries with 35 to 500 employees has been established at \$1,800 and a lower-tier small entity fee of \$400 established for those manufacturing industries with less than 35 employees. The lower-tier receipts-based threshold of

\$250,000 has been raised to \$350,000 to reflect approximately the same percentage adjustment as that made by the SBA when they adjusted the receipts-based standard from \$3.5 million to \$5 million. The NRC believes that these actions will reduce the impact of annual fees on small businesses. The NRC size standards are codified at 10 CFR 2.810.

Public Law 101-508, the Omnibus Budget Reconciliation Act of 1990 (OBRA-90), requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, for Fiscal Years (FY) 1991 through 1995 by assessing license and annual fees. OBRA-90 was amended in 1993 to extend the 100 percent recovery requirement for NRC through 1998. For FY 1991, the amount for collection was approximately \$445.3 million; for FY 1992, approximately \$492.5 million; for FY 1993 about \$518.9 million; for FY 1994 about \$513 million and the amount to be collected in FY 1995 is approximately \$503.6 million.

To comply with OBRA-90, the Commission amended its fee regulations in 10 CFR parts 170 and 171 in FY 1991 (56 FR 31472; July 10, 1991) in FY 1992, (57 FR 32691; July 23, 1992) in FY 1993 (58 FR 38666; July 20, 1993) and in FY 1994 (59 FR 36895; July 20, 1994) based on a careful evaluation of over 1,000 comments. These final rules established the methodology used by NRC in identifying and determining the fees assessed and collected in FY 1991, FY 1992, FY 1993 and FY 1994. The NRC has used the same methodology established in the FY 1991, FY 1992, FY 1993, and FY 1994 rulemakings to establish the fees to be assessed for FY 1995 with the following exceptions: (1) The Commission has reinstated the annual fee exemption for nonprofit educational institutions; (2) in the FY 1994 final rule, the NRC directly assigned additional effort to the reactor and materials programs for the Office of Investigations, the Office of Enforcement, the Advisory Committee on Reactor Safeguards, and the Advisory Committee on Nuclear Waste; and (3) for FY 1995, the NRC is using cost center concepts, now being used for budgeting purposes, to develop the fees. The NRC is also (1) changing the method for allocating the budgeted costs (about \$56 million) that cause fairness and equity concerns; (2) eliminating the materials "flat" inspection fees in 10 CFR 170.31 and including the inspections with the annual fees in 10 CFR 171.16(d); and (3) establishing two professional hourly rates to better align the budgeted costs with the major classes of licensees. The methodology for assessing low-level waste (LLW) costs was changed in FY 1993 based on the U.S. Court of Appeals decision dated March 16, 1993 (988 F.2d 146 (D.C. Cir. 1993)). The FY 1993 LLW allocation method has been continued in the FY 1995 final rule.

II. Impact on Small Entities.

The comments received on the proposed FY 1991, FY 1992, FY 1993, and FY 1994 fee rule revisions and the small entity certifications received in response to the final FY 1991, FY 1992, FY 1993, and FY 1994 fee

rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily those licensed under the NRC's materials program. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees.

The Commission's fee regulations result in substantial fees being charged to those individuals, organizations, and companies that are licensed under the NRC materials program. Of these materials licensees, about 18 percent (approximately 1,300 licensees) have requested small entity certification in the past. In FY 1993, the NRC conducted a survey of its materials licensees. The results of this survey indicated that about 25 percent of these licensees could qualify as small entities under the current NRC size standards.

The commenters on the FY 1991, FY 1992, FY 1993, and FY 1994 proposed fee rules indicated the following results if the proposed annual fees were not modified:

- Large firms would gain an unfair competitive advantage over small entities. One commenter noted that a small well-logging company (a "Mom and Pop" type of operation) would find it difficult to absorb the annual fee, while a large corporation would find it easier. Another commenter noted that the fee increase could be more easily absorbed by a high-volume nuclear medicine clinic. A gauge licensee noted that, in the very competitive soils testing market, the annual fees would put it at an extreme disadvantage with its much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.
- Some firms would be forced to cancel their licenses. One commenter, with receipts of less than \$500,000 per year, stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Another commenter noted that the rule would force the company and many other small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.
- Some companies would go out of business. One commenter noted that the proposal would put it, and several other small companies, out of business or, at the very least, make it hard to survive.
- Some companies would have budget problems. Many medical licensees commented that, in these times of slashed reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Another noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over the past four years, approximately 2,900 license, approval, and registration terminations have been requested. Although

some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

The NRC continues to receive written and oral comments from small materials licensees. These commenters previously indicated that the \$3.5 million threshold for small entities was not representative of small businesses with gross receipts in the thousands of dollars. These commenters believe that the \$1,800 maximum annual fee represents a relatively high percentage of gross annual receipts for these "Mom and Pop" type businesses. Therefore, even the reduced annual fee could have a significant impact on the ability of these types of businesses to continue to operate.

To alleviate the continuing significant impact of the annual fees on a substantial number of small entities, the NRC considered alternatives, in accordance with the RFA. These alternatives were evaluated in the FY 1991 rule (56 FR 31472; July 10, 1991) in the FY 1992 rule (57 FR 32691; July 23, 1992), in the FY 1993 rule (58 FR 38666; July 20, 1993) and in the FY 1994 rule (59 FR 36895; July 20, 1994). The alternatives considered by the NRC can be summarized as follows:

- Base fees on some measure of the amount of radioactivity possessed by the licensee (e.g., number of sources).
- Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).
- Base fees on the NRC size standards for small entities.

The NRC has reexamined the FY 1991, FY 1992, FY 1993, and FY 1994 evaluation of the these alternatives. Based on that reexamination, the NRC continues to believe that establishment of a maximum fee for small entities is the most appropriate option to reduce the impact on small entities.

The NRC established, and is continuing for FY 1995, a maximum annual fee for small entities. The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts

that should be charged to a small entity. For FY 1995, the NRC will rely on the analysis previously completed that established a maximum annual fee for a small entity and the amount of cost that must be recovered from other NRC licensees as a result of establishing the maximum annual fees. The NRC continues to believe that license fees, or any adjustments to these fees during the past year, do not have a significant impact on small entities. In issuing this final rule for FY 1995, the NRC concludes that the materials license fees do not have a significant impact on a substantial number of small entities and that the maximum annual small entity fee of \$1,800 be continued.

By maintaining the maximum annual fee for small entities at \$1,800, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, pay for most of the FY 1995 costs (\$27 million of the total \$33 million) attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to operating power reactors. However, the amount that must be recovered from other licensees as a result of maintaining the maximum annual fee is not expected to increase. Therefore, the NRC is continuing, for FY 1995, the maximum annual fee (base annual fee plus surcharge) for certain small entities at \$1,800 for each fee category covered by each license issued to a small entity.

While reducing the impact on many small entities, the Commission agrees that the maximum annual fee of \$1,800 for small entities, when added to the Part 170 license fees, may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, as in FY 1992, FY 1993, and FY 1994, the NRC is continuing the lower-tier small entity annual fee of \$400 for small entities with relatively low gross annual receipts. The lower-tier small entity fee of \$400 also applies to manufacturing concerns and educational institutions not State or publicly supported with less than 35 employees. This lower-tier small entity fee was first established in the final rule published in the **Federal Register** on April 17, 1992 (57 FR 13625) and would now

include manufacturing companies with a relatively small number of employees.

In establishing the annual fee for lower-tier small entities, the NRC continues to retain a balance between the objectives of the RFA and OBRA-90. This balance can be measured by: (1) The amount of costs attributable to small entities that is transferred to larger entities (the small entity subsidy); (2) the total annual fee small entities pay, relative to this subsidy; and (3) how much the annual fee is for a lower-tier small entity. Based on this final rule, the amount of the FY 1995 small entity subsidy is lower than that for FY 1994. Thus, no change is being made.

III. Summary

The NRC has determined the annual fee significantly impacts a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of \$1,800 for small entities and a lower-tier small entity annual fee of \$400 for small businesses and not-for-profit organizations with gross annual receipts of less than \$350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA-90. Thus, the revised fees for small entities maintain a balance between the objectives of OBRA-90 and the RFA. The NRC has used the methodology and procedures developed for the FY 1991, FY 1992, FY 1993, and FY 1994 fee rules in this final rule except those noted in Section III, in establishing the FY 1995 fees. Therefore, the analysis and conclusions established in the FY 1991, FY 1992, FY 1993, and FY 1994 rules remain valid for this final rule for FY 1995.

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